



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION  
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RICHMOND, 23219-2000

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March 8, 2000

Greetings:

I am pleased to inform you the revised manual entitled Guidelines for the Procurement & Management of Professional Services has been completed and is now available through the icon located on your computer desk top which appears as *Network Neighborhood*. This manual has been accepted as our official policy for procuring and administering professional service consultant contracts.

Significant changes have been made to the manual, so please take the time to familiarize yourself with these revised guidelines. All future advertisements, selection, award, and management of contracts for professional services must comply with these guidelines.

The Consultant Coordinating Committee will make changes and update the guidelines **as changes occur**. It is imperative that you **register your copy by sending an e-mail to George Clendenin** as indicated on the Registration Information Form in the manual. **Registered users will receive e-mail notices of future changes**. Additionally, you are encouraged to occasionally view the computer sites under *Network Neighborhood* 0501cosnb, Guidelin, Guidelin.obd or *Network Neighborhood* 501016w58831, Guidelin, Guidelin.obd for the latest changes. The revised Figures consisting of sample charts, forms, letters, reports, etc. will be prepared and issued at a later date.

  
Bill Lindsey  
Administrator

WE KEEP VIRGINIA MOVING

# GUIDELINES FOR THE PROCUREMENT & MANAGEMENT OF PROFESSIONAL SERVICES

FEBRUARY 2000

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Areas in the Guidelines where revisions have occurred will be noted by a number enclosed in brackets corresponding to this Index.

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Section 4.60 Allowable net fee ranges and overhead cap used in determining net fee.  
Chapter 5 Delete reference to retainage.  
Section 7.10 Delete reference to retainage.

GUIDELINES  
FOR THE  
PROCUREMENT & MANAGEMENT  
OF  
PROFESSIONAL SERVICES

**REGISTRATION INFORMATION**

Please do not remove this page from the Guidelines.

[1] The current version of the Guidelines will be accessible on the computer server on the Network Neighborhood at: 0501cosnb, folder: Share\_GMC, subfolder: Guidelin and 0501cosnb, folder: Share\_GMC, subfolder: consult2

Please send an e-mail to George Clendenin on Outlook or clendenin\_gm@vdot.state.va.us on the Internet to register that you have a copy of the Guidelines. This will ensure that you receive notification of any revisions to the Guidelines. If you received the Guidelines from another person, please indicate the previous holder of the manual. If you reproduced a copy from someone or download a copy, please register your copy. Please include the following information in your e-mail:

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## TABLE OF CONTENTS

### PREFACE

### CHAPTER 1 - DETERMINATION OF NEED FOR OUTSIDE SERVICES

- 1.10 - Determination of Need
- 1.20 - Determine Scope of Services
- 1.30 - Estimate Cost of Services
- 1.40 - Approval to Use Consultants

### CHAPTER 2 - ADVERTISEMENT PROCEDURE

- 2.10 - General
- 2.20 - Public Notice Time Limit
- 2.30 - Virginia Business Opportunities (VBO) Notification
- 2.40 - Newspaper Notification
- 2.50 - VDOT Internet Opportunities Network
- 2.60 - Request for Proposal (RFP) Brochure
- 2.70 - Project Showing

### CHAPTER 3 - SELECTION PROCEDURE

- 3.10 - Consultant Selection Guidelines
- 3.20 - Short List Selections
- 3.30 - Final Selection
- 3.40 - Attendees at Selection Committee Meetings
- 3.50 - Final Selection Approval
- 3.60 - Consultant Debriefings

### CHAPTER 4 - CONTRACT NEGOTIATION

- 4.10 - General
- 4.20 - Scope of Work Meeting and Invitation to Submit Proposal
- 4.30 - Department's Fee Estimate
- 4.40 - Consultant's Fee Proposal
- 4.50 - Proposal Evaluation
- 4.60 - Net Fee
- 4.70 - Title VI Evaluation Report
- 4.80 - Negotiations
- 4.90 - Pre-Award Audit Evaluation
- 4.100 - Documentation of Negotiations
- 4.110 - Memorandum of Agreement
- 4.120 - Limited Services Term Contracts
- 4.130 - Types of Compensation

### CHAPTER 5 - CONTRACT IMPLEMENTATION

### CHAPTER 6 - CONSULTANT CONTRACT DATA TRACKING

### CHAPTER 7 - PAYMENT PROCESS/VOUCHERS

- 7.10 - Voucher Instructions
- 7.20 - Review of Invoices
- 7.30 - Annual FAR Audits
- 7.40 - Voucher Package Distribution
- 7.50 - Interim and Final Audits
- 7.60 - Items Eligible for Reimbursement As Consultant's Cost

7.70 - Final Payment

CHAPTER 8 - CONTRACT ADMINISTRATION/REVIEWS

8.10 - Project Administration

8.20 - Review of Consultant Performance and Services

8.30 - Final Consultant Performance Report

8.40 - Title VI Evaluation Report

8.50 - Insurance

8.60 - Plan Errors and Omissions

8.70 - Ethics in Contracting

CHAPTER 9 - SUPPLEMENTAL AGREEMENTS

CHAPTER 10 - SMALL PURCHASE PROCEDURES FOR PROFESSIONAL SERVICES

CHAPTER 11 - SOLE SOURCE / EMERGENCY CONTRACTS

11.10 - General

11.20 - Sole Source Contracts

11.30 - Emergency Contracts

CHAPTER 12 - CONSULTANT ENGINEERING INSPECTION

12.10 - General

12.20 - Direct and Indirect Costs

APPENDIX A - CONSULTANT AGREEMENT CHECKLIST

APPENDIX B - FLOW CHARTS

APPENDIX C - FEDERAL AID POLICY GUIDE PART 172

APPENDIX D - DBE POLICY

APPENDIX E - GUIDELINES FOR THE USE OF CONSULTANT PERFORMANCE REPORTS IN THE SELECTION PROCESS

# PREFACE



## PREFACE

### Purpose

This Guideline has been prepared to promote uniformity in the method of procuring professional services by the Virginia Department of Transportation (VDOT) as set forth in the Department Policy Memorandum (DPM) 6-3, the Virginia Public Procurement Act (VPPA). (<http://leg1.state.va.us/cgi-bin/legp504.ext?000+cod+11-35>) and Federal-Aid Policy Guide, 23 CFR 172A, Part 172 – Administration of Engineering and Design Related Service Contracts (Appendix C).

This Guideline is intended to serve as an informational and procedural guide and shall be used in conjunction with The Code of Virginia and applicable Federal/Department/Divisional regulations. The figures, tables and charts (located at the end of each chapter) included within this Guideline are intended as the basic framework and examples of documents necessary to conform with the appropriate policies. Each division may require different or additional letters and/or charts. A Consultant Agreement Checklist (Appendix A) and Flow Charts (Appendix B) are provided in the Guideline.

Professional Responsibility - Consultants are responsible for conceiving and designing all types of engineering works and services and for providing the assurance that they are properly and economically constructed. The health, safety, and comfort of the public depend to a considerable extent upon how well the Consultant fulfills this obligation and thereby contributes to the enhancement of human welfare. The Consultant has, therefore, obligations as trustee to the public interest as well as to the private interests of the Department. Successful fulfillment of these responsibilities requires complete candor, understanding, and communication on the part of the Consultant and the Department so that mutual trust and respect can be established.

The Consultant is often responsible for planning that may commit the Department to the expenditure of large sums of money. The benefits of the work to be constructed from this planning, and its suitability for the project's intended function, must often be accepted at face value by the Department which may be unfamiliar with the technical aspects of such works. By their very nature, then, consultant services must be performed in a competent and efficient manner, on a highly ethical plane, and in an atmosphere of mutual trust between the Department and the Consultant.

Consulting Engineering Services - "Consulting Engineering," as the term is used in the United States - and this Guideline - includes not only consultation, advice, and expert testimony, but also the furnishing of extensive and diversified services by engineering firms especially organized and maintained for that purpose. Such firms draw upon the combined talents of designers, technical analysts, specification writers, technicians, inspectors, surveyors, and other experienced engineers; they also utilize the expertise of practitioners and specialists in other fields.



The various kinds of engineering services offered by Consultants might include: (1) conducting feasibility studies; (2) conducting field investigations and collecting engineering data; (3) considering the environmental impacts of a project and submitting an assessment statement; (4) preparing engineering reports based upon such investigations; (5) preparing cost estimates; (6) furnishing designs, drawings, and specifications; (7) securing bids and assisting in the award of contracts; (8) observing construction; (9) testing and approving equipment and materials for acceptance; (10) making appraisals; (11) serving as expert witness; (12) assisting in claims management; (13) preparing instruction/operating manuals; (14) performing structure safety inspections; and (15) performing construction engineering inspections.

The Federal Procurement Regulations (FPR) define architect-engineer services as "those professional services associated with research, development, alteration, or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform: including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services."

Professional Services may include:

- Bridge safety inspections
- Building architecture
- Construction engineering
- Construction engineering inspection
- Electrical engineering
- Environmental services
- Geotechnical services
- Hydrologic and hydraulic studies
- Landscape architecture
- Materials testing
- Mechanical engineering
- Preparation of operating and maintenance manuals for systems designed as a professional service
- Project design (PS&E)
- Project management of professional services
- Right of way engineering
- Roadway design
- Roadway lighting design
- Technical Specification writing
- Structural design
- Surveying
- Traffic investigations and studies
- Traffic signs and signals design
- Transportation planning

- Utility inspections
- Value engineering

The Virginia Public Procurement Act defines "Professional Services" to mean work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering. Virginia law states that "Professional Engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board through licensure as a professional engineer. The "practice of engineering" means any service wherein the principles and methods of engineering are applied to, but are not necessarily limited to, the following areas: consultation, investigation, evaluation, planning and design of public or private utilities, structures, machines, equipment, processes, transportation systems and work systems, including responsible administration of construction contracts.

#### Distribution of the Guidelines

Issuance is based on the Department's requirements and one copy each may be assigned at no charge to government agencies. As revisions, deletions and additions become necessary, they will be incorporated into the Guidelines and will be distributed to all assignees. Recent revisions to the Guidelines are included with this February 2000 edition.

# CHAPTER 1

DETERMINATION  
OF  
NEED  
FOR  
OUTSIDE  
SERVICES



## CHAPTER 1 - DETERMINATION OF NEED FOR OUTSIDE SERVICES

### 1.10 Determination of Need

The Virginia Department of Transportation requires outside services to augment its professional staff and to carry out the Department's goals effectively. Some projects may require an expertise that the Department does not possess, while others may require manpower that is not available. The Department may require the utilization of outside services, as needed, for professional services.

Professional services are generally retained when: (1) a given project needs to be expedited, but the staff is assigned to other important projects and cannot be released without jeopardizing those projects; (2) the division's work program may be substantially larger than normal or anticipated for future years and it would serve no useful purpose to increase the size of the staff for a short period of time; or (3) the unusual character of a project requires specialized knowledge, expertise or experience beyond the every day scope of the Department staff.

Consulting, professional and individual services may also be used to obtain:

- An opinion, advice or skill which is needed only temporarily and which is not available within the agency or from another state agency.
- Outside expertise to provide a broader perspective or objective opinion on critical or sensitive issues.
- Benefit of developments in industry, university, or foundation research.
- The opinions of experts whose national or international prestige can contribute to the success of important projects.
- A deliverable that is an individually tailored application of a product already developed by an outside firm and is available more economically and expeditiously than a comparable product developed in-house.
- Performance of one-time tasks or activities of limited duration that do not warrant augmentation of permanent staff.
- Performance of one-time tasks or activities of limited duration that requires the augmentation of permanent staff in order to comply with deadlines imposed by third parties.

Each Division Administrator is responsible for determining when outside services are needed to accomplish their work objectives or to assist the districts. This is determined by analyzing the available manpower compared with projected work that has to be accomplished, utilizing the division's Workload Assessment System and the Six Year Improvement Program, and/or the specialized nature of the work.

### 1.20 Determine Scope of Services

If the Division Administrator determines that outside services are needed and that other divisions may want to be involved, the divisions will be contacted in writing, and a scoping meeting held to determine which work tasks should be included in the procurement. A scoping meeting may not be warranted if sufficient information is provided to the other divisions for them to fully determine the scope of their involvement in the project. An effort will be made to develop a comprehensive scope of work prior to the project being advertised. This is to ensure that all of the required services are included in the Request for Proposal (RFP) and to help prevent future supplemental agreements. After determining the services and the scope of work that are to be included in the procurement, the lead division and Project Manager will be determined. If the lead division cannot be determined at the scoping meeting, the Division Administrator shall make the decision. At the scoping meeting, a recommendation will be developed for Selection Committee membership.

[4] Early consultation shall be made with the FHWA on federally funded NHS oversight projects, federal funded projects with an estimated total cost of \$1,000,000,000 or more, or when the consultants are to act in a management role for the Department on federally funded projects.

If the Scope of Work for all phases or stages of the work cannot be clearly defined until some of the initial work is completed, then a multiphase professional services contract may be used. Multiphase professional services contracts satisfactory and advantageous to VDOT for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.

Location and Design Division's Hydraulic Section shall be coordinated with for any project involving a stream crossing or requiring a hydrologic and hydraulic analysis.

### 1.30 Estimate Cost of Services

If the determination is made that outside services are to be used for the design or development of a specific project, the Project Manager shall determine the total Preliminary Engineering, Right of Way, and Construction cost based on the information received from each division involved. Each affected division shall prepare a planning estimate (\*) of cost for the project or assignment and submit it to the Project Manager of the lead division. The planning estimate is required from the affected division regardless of how the division chooses to accomplish their work.

\* Planning estimates of the preliminary engineering, right of way and construction cost may be developed without the full knowledge of the final project/assignment scope, but are based on the best information available, including evaluation of cost for similar work previously performed.

The Project Manager will then notify the funding division (Figure 1\_). A comparison shall be made with the figures in the Six Year Improvement Program. If an adjustment in the

budget cost needs to be made, approval from the appropriate funding division must be obtained in writing and retained in the project file before proceeding. The Project Manager will verify availability of funding. If additional funds are not approved, the determination of the project must be reviewed with the Chief Engineer/Assistant Commissioner. (Some divisions administer special funds, such as federal State Planning and Research (SPR) funds, that do not require this procedure to be followed).

Funding divisions are notified using Verification of Funding for Preliminary Engineering (Figure 1\_).

Funding Divisions:

Primary Projects	- Programming and Scheduling Division
Urban Projects	- Urban Division
Secondary Project	- Secondary Roads Division
Bridge Inspections	- Maintenance Division
CEI Inspections	- Construction Division
Wetland Mitigation Sites	- Environmental Division

1.40 Approval to Use Consultants

A memorandum is to be submitted by the Project Manager to the Division Administrator requesting approval to utilize outside services (Figure 1\_) and recommending persons for the Selection Committee. This Committee will include only one member from the lead division unless appropriate technical expertise is not available from other divisions. At least one member of the Selection Committee will be from the lead division. Additional persons may serve on the Selection Committee depending on the scope of the work and the number of divisions involved. Membership should be composed of persons who are qualified to evaluate the service being provided and are thoroughly familiar with the objectives of the project. A Chairperson for the Selection Committee will be named by the Division Administrator of the lead division. The Division Administrator will also approve the Selection Committee. This memorandum will include a copy of the proposed selection criteria (Figure 3\_). The Division Administrator shall review the selection criteria and DBE goal (Appendix D) which is to be used for each procurement. The evaluation categories and weights may, with the approval of the Division Administrator, be adjusted to reflect the important specifics involved in the proposed procurement.

Once approval is obtained, the lead division, with assistance from all involved divisions, shall prepare the Request for Proposal advertisement for Expressions of Interest (Figure 1\_). The Project Manager requests other involved divisions or districts to assign a coordinator to assist in determining the scope of work, and to provide an estimate of man-hours and cost for consultants to perform the requested services (Figure 1\_). The estimated cost and man-hours for in-house reviews, instruction and coordination meetings, etc., should also be furnished (Figure 1\_).

The Federal Highway Administration's approval is not required when consultants are being utilized on projects using federal funding except for [3] projects with an estimated total cost of \$1,000,000,000 or more, or when the consultants are to act in a management role for the Department.

All procurement of professional services will be made in the Central Office. Procurement of professional services by the districts is not authorized. Once the procurement has been completed by the Central Office, the Division Administrator may turn the contract over to district personnel to administer. District personnel administering professional service contracts must be knowledgeable of these Guidelines and the VPPA.

# CHAPTER 2

ADVERTISEMENT  
PROCEDURE





## CHAPTER 2 - ADVERTISEMENT PROCEDURES

### 2.10 General

The Department shall make a public announcement in a uniform and consistent manner on each occasion when professional services are required on a proposed project. Multiple consultant selections from a single advertisement shall not be made except for limited services term contracts. For these contracts, one advertisement may be used with separate Expressions of Interest required for each term contract. Individual short lists and selections shall be made for each term contract.

After approval to use outside professional services has been received from the Division Administrator, the Department shall place an advertisement in newspapers of general circulation in the area where the work will be performed. Generally, the advertisement will be placed in the Richmond Times Dispatch, another newspaper of general circulation in the project area, and a minority owned newspaper in those areas, when available. Special projects may be advertised in the Washington Post, and sometimes trade publications, depending on the scope of work. In addition, the VDOT Internet Opportunities Network (<http://www.vdot.state.va.us/opnet>) will also be used for publicly posting these advertisements. The Department of Minority Business Enterprise also will be notified. Advertisement in the newspapers is handled through the Office of Public Affairs. Newspaper advertisements will be reviewed by all involved divisions. These newspaper advertisements will be concise, excluding detailed job requirements and proposal preparation requirements that are included in the Request for Proposal. They will contain a general description of the type of work, project location, information on how to obtain a copy of the solicitation, and a statement on where to send replies and when they are due. The Department of General Services (DGS) handles publication in the Virginia Business Opportunities (VBO). The Selection Committee Chairperson or their designee will prepare the VBO notice and send it to DGS. A copy of the newspaper advertisement and RFP will be furnished to Administrative Services Division (ASD) the same week the VBO notice is published. It is also a requirement to post a notice of each RFP being advertised in a public area normally used for posting public notices. ASD will post a copy of the RFP in their usual area for public notices.

Provide in the newspaper and VBO advertisement the following information at a minimum:

- name and address of the Agency
- title, brief description and location of the project
- estimated total project construction cost (if applicable)
- brief scope of services required
- brief description of any special requirements or unique features
  
- completion date
- location where the RFP may be obtained

- last date for submitting an expression of interest in the project
- "The RFP for this project may be accessed through VDOT's Internet site: <http://www.vdot.state.va.us/opnet/>"
- "TDD Only Calls: 1-800-307-4630"
- "VDOT Internet File No. \_\_\_\_\_" (VDOT Internet File No. DD##YEAR where DD is an abbreviation for the division, ## is a sequential two digit number and YEAR is the current year. The first Structure and Bridge Division advertisement in 1998 would have the File No. SB011998.)
- "The Department assures compliance with Title VI requirements of nondiscrimination in all activities pursuant to this advertisement"

Telephone access to the hearing impaired will be provided and the telephone number included in the public notice. The Project Manager will provide a copy of the public notice to Location and Design's preliminary engineering section (Room 713 Annex) where the Telephone Device for the Deaf (TDD) equipment is located so that they will know where to forward any TDD inquiries.

Firms choosing to respond to the advertisement may contact the Project Manager to receive additional information. Anyone else that is contacted should refer the consultant to the Project Manager. Only information of a general nature should be discussed or given to any consultant so that one consultant will not have a competitive advantage over another.

The opportunity for consultants to visit for the purpose of gathering information necessary in the preparation of their proposal should be provided. Plans and data regarding the project should be made available for the consultant to independently review without input from Department personnel. Information should not be provided to one consultant that is not available to all. Usually, such visitations will supplant a formal project showing. However, the Department must ensure that each consultant is treated in a uniformly fair manner with equal access to information and agency personnel.

In order to be short listed, a consultant only needs to have a general idea of the type of expertise required for the project. Once short listed, the firms will be provided with additional project data in order to prepare for their presentations/interviews.

## 2.20 Public Notice Time Limit

The public notice of the Request for Proposal (RFP) shall be published at least fourteen (14) calendar days, with the publication date counting as the first day, prior to the date set for receipt of Expressions of Interest (EOI). To provide a response opportunity to the maximum number of offerors, a four (4) week return date is recommended.

Project showings set for a particular day shall be scheduled no earlier than ten calendar days from the publication date. This gives firms adequate time to find out about the meeting and to make plans to attend.

## 2.30 Virginia Business Opportunities (VBO) Notification

All professional services procurement over \$15,000 will be advertised in the VBO. The VBO is a magazine published by the Virginia Department of General Services (DGS) (<http://www.dgs.state.va.us/dps/vendors/docs/vbo.htm>) on a weekly basis to notify the general public of the Commonwealth of Virginia's intent to purchase supplies or services (Figure 2\_). Form DGS-42-033 (Figure 2\_) must be completed and delivered to the Virginia Department of General Services, Division of Purchases and Supply, 805 East Broad Street, 3rd Floor, Richmond, Virginia 23219, by noon, on Monday prior to the Thursday the advertisement is to appear. If Monday is a State holiday, then submit on the Friday before that Monday. The VBO has an Internet site (<http://www.dgs.state.va.us/dps/index.htm>) that allows you to submit the request by email (Figure 2\_). Go to the Internet address, click on Search DPS Website and then click on VBO Ad Entry. Emergency and sole source procurements are exempt from advertisement in the VBO. Written evidence of the VBO advertisement shall be included in the procurement file.

The VBO is one of the consultants' primary means of finding out what work the Department is advertising and all consultant firms desiring to perform work for the Department should be encouraged to subscribe to the VBO.

It is recommended to fax forms whenever possible. Receipt of the faxed forms by DGS should be verified by telephone prior to the cut-off time. Forms not received by noon on Monday will be held for publication the following week. The advertising agency will be required to change the bid return date if necessary to comply with the new publication cycle.

Agencies may, on a case by case basis, waive the advertising requirement if extenuating circumstances, such as emergency or sole source contracts, exist. Reasons for the waiver must be documented in writing and approved by the Chief Engineer/Assistant Commissioner. The signed waiver shall be included in the procurement file and a copy forwarded to the VBO office.

#### 2.40 Newspaper Notification

A memorandum shall be sent to the Public Affairs Manager (Figure 2\_) requesting an advertisement be published in the Richmond Times Dispatch, another newspaper of general circulation in the project area, and a minority owned newspaper in those areas, when available (Figure 2\_). A brief narrative of the services required, including the name of the contact person, is to be attached to this letter (Figure 2\_). The newspaper advertisement requires more lead time to be published than the VBO. Therefore, it should be sent to Public Affairs (Figure 2\_) the week before the notice is sent to the VBO. Written evidence of the newspaper advertisement shall be included in the procurement file.

#### 2.50 Request for Proposal Brochure

The division requesting outside services shall prepare a Request for Proposal (RFP) brochure (Figure 2\_). In the RFP, the project shall be listed with a brief narrative statement

concerning its location, scope of service required, estimated construction cost, type of contract proposed (see Section 4.130), evaluation criteria, DBE requirements (Appendix D) and the estimated start and completion dates. A project location map will be included. Appropriate statements shall be made concerning any specialized qualifications and limitations on eligibility for consideration. Qualifications or performance data required from consultant firms shall be described. The name of the responsible procurement office shall be shown complete with the full address, telephone and fax number. Assurance of compliance with the Title VI requirements of nondiscrimination in all activities pursuant to the project is also provided. The RFP will not request that offerors furnish estimates of man-hours or cost for services. There are three sample Consultant Selection Score Sheets in the guide RFP (Figure 2\_) with different DBE requirements. Only one form is to be included in the RFP. Other scoring ranges for workload with VDOT may be used with approval of the Division Administrator. Score sheets, with lower present workload with Department limits, may be used on small projects in order to give firms with little or no work with the Department a better chance of getting work. When multiple divisions are involved in a procurement, the experience categories may be separated into different items by division and each assigned a weight according to its relative importance.

A copy of this RFP brochure shall be sent to:

Department of Minority Business Enterprises  
9th Street Office Building  
11th Floor  
Richmond, Virginia 23219

Firms interested in providing the requested services may download the RFP from the Internet or request, by telephone, in writing, or in person, an RFP brochure from the contact person listed in the advertisement. RFP brochures are sent to firms using the Request for Proposal Transmittal Letter (Figure 2\_). In addition, the RFP will be posted to the VDOT Internet Opportunities Network (See Section 2.60). Many firms will obtain the RFP's from the Opportunities Network and there is no record of which firms do this. The Expressions of Interest (EOI) sent by consultants in response to an RFP will be received by the Administrative Services Division (ASD). Their present designated area for receipt of bids and proposals will be used (See RFP). ASD will date stamp EOI's, record upon receipt, and store them. No acknowledgment of receipt of the EOI will be sent to the consultant. If the RFP is hand delivered to ASD and a receipt is desired, the consultant must furnish their own receipt which will be date stamped by ASD. The cutoff time for receipt of EOI's is 4:00 p.m. on the designated date.

A selection committee of 3 or more people will review, evaluate and score the Expressions of Interest submittals using our consultant selection score sheet (Figure 2\_). A copy of the score sheet is furnished to each firm with the RFP. The number of requested copies of an Expression of Interest should equal the number of scoring members on the Selection Committee. This will facilitate the rapid evaluation of the submittals by the Selection Committee.

The RFP requests that certain necessary information be submitted. Some of this information includes location of where the work will be performed (if applicable and necessary), key personnel that will be assigned to the project, experience in performing similar work, special qualifications, organizational structure, DBE percent of work (if applicable), firm data (name, address, DBE status, age and annual gross receipts), ability to meet the time schedule, current workload with the VDOT, and GSA Form 254 (Figure 2\_), and Form 255 (Figure 2\_). It also points out VDOT requirements regarding professional registration, debarment, the employment of illegal aliens, the method of payment for the contract (See Section 4.120), and submittal requirements.

#### 2.60 VDOT Internet Opportunities Network

The RFP is prepared in electronic format using Microsoft Word. Location maps will be scanned and included in the RFP. The file is then converted into an Adobe Acrobat pdf file. The RFP will be posted on the VDOT Internet Opportunities Network. This should be done prior to the newspaper or VBO advertisement being published. RFP's are to be deleted from the Internet after the closing date for receipt of the consultant submittals. The format and style for posting information to the VDOT Internet Opportunities network are controlled by the Public Affairs Division.

Any firm that writes or calls for a RFP should be encouraged to start using the Internet.

#### 2.70 Project Showing

A project showing may be necessary on unusually complex projects between advertising and receipt of RFP's. Its purpose is to help individuals and firms understand the requirements fully and to supply more detail where needed. If a project showing is to be held, it should be indicated in the public notices and the RFP. The project showing should be no sooner than ten (10) calendar days after the public notices are published in order to provide time for the consultants to become aware of the showing and to plan to attend. Representative from all involved divisions should attend the meeting. An attendance sheet of persons attending the meeting will be kept in the project file.

#### 2.80 Receipt of RFP's

After the closing date, the ASD Procurement Manager or designee will notify the Selection Committee Chairperson to pick up the EOI's. The Selection Committee Chairperson retains the date stamped set of EOI's. ASD only date stamps one set of EOI's. When picking up the EOI's, immediately make sure all the EOI's are for the correct project and notify ASD if there are any problems. ASD will return late submittals to consultants with a letter stating the date and time the submittal was received and that it cannot be considered. A checklist (Figure 2\_) showing Administrative Services Division's functions in the advertising process will be used to ensure accuracy. This checklist should include a list of current professional services projects with the advertising functions required by Administrative Services Division personnel and an indication of what has been completed. This checklist will show when proposals are received and when late proposals are returned to the offeror. It will also show when proposals are picked up by the Chairperson or his/her

representative and identify that person. As Administrative Services completes its activities in the selection process, these functions will be indicated on the checklist form.

# CHAPTER 3

SELECTION  
PROCEDURE



## CHAPTER 3 - SELECTION PROCEDURE

### 3.10 Consultant Selection Guidelines

Selection of the consultant is one of the most important of the Department's decisions during development of any engineering project. Upon the experience, skill, integrity, and judgement of the consultant rest the cost, suitability, and structural soundness of the proposed work for its intended function. The consultant's decisions based on these factors affect costs that influence the economic feasibility of the entire undertaking.

Many factors must be considered by the Selection Committee in determining the most appropriate and qualified consultant for a particular project. Among these are:

1. The professional reputation of the consultant is a prime consideration. The reputation and character of a consultant can best be determined by inquiries with previous clients and other references. The firm must be of a high ethical and professional standing and the principals and other members of the firm must be registered professional engineers in their state of residence and also registered professional engineers in the State of Virginia. Their businesses must also be registered to do business in Virginia. A listing of professional engineers and professional firms in Virginia may be accessed on the Internet at <http://www.state.va.us/dpor/>. The State Corporation Commission maintains a BBS on which you may verify a firm's corporate registration. Professionalism is demonstrated by independence and objectivity in analysis and problem solving. It is further evidenced by a recognition of boundaries of competence and willingness to stay within those boundaries voluntarily. Finally, professionalism is indicated by ethical business and personal conduct. That is, individuals or firms should be able to demonstrate that they: assign to a project only those personnel who are qualified to do the work; seek client approval of the personnel to be assigned to a project and then assign only those individuals; keep the client informed of who is currently assigned to the project; bill the client only for work actually performed and directly related to the agreement between the two parties and the contractual fee arrangements; and, as individuals, maintain the highest levels of personal behavior.

2. Experience of the consultant in performing specific services related to the project. Specialized experience and design and technical competence of the firm, joint venture, or association, regarding the types of services required. All relevant experience must be considered, not just prior VDOT experience. Prior VDOT experience is not a criteria for getting work with VDOT.

3. Qualifications and experience of principals of the consultant and of the project manager and key staff engineers nominated for the project.

4. Education, training and experience of the consultant's professional and technical staff with respect to the magnitude of the project. The firm must be adequately staffed and qualified to perform the work under consideration. The individuals must be able to



demonstrate knowledge and productivity in the technical area(s) germane to the particular engagement. These skills should derive both from formal education and training and from successful experience in applying the required technical skills on prior projects for similar clients. It should be evident that the individuals have already produced solutions and results that are practical, realistic and useful to clients as they apply or relate to the specific needs of the Department.

5. The extent of in-house capabilities of the consultant to perform specialized services required by the project. Each consultant shall be capable of performing all necessary tasks of his assignment with his own organization and associated consultants. Should the consultant require the use of outside specialized services, such services should be indicated. The consultant may utilize, with prior written consent by the Department, other firms to perform supplemental specialized services such as aerial and ground surveys, obtaining geologic borings, making exhibits and other work or services.

6. Quality of workmanship and performance of the consultant. This may be determined by a review of sample plans/previous work, inquiries with previous clients, and review of VDOT's Consultant Performance Reports.

7. Understanding of the project requirements by the consultant.

8. The ongoing concurrent work load of the consultant which may influence project schedules.

9. Familiarity of the consultant with applicable federal, state and local regulations, criteria, standards and procedures with respect to planning, design and approval of the project.

10. Financial standing of the consultant. This may be determined by requesting a certified financial statement. (Pre-Award Audit)

11. Past record of performance on contracts with respect to such factors as control of costs, coordination and quality of work, and ability to meet schedules. How will cost and quality control be implemented and how will different disciplines/firms be coordinated on our project?

12. Current workload with the Department. The volume of ongoing work previously awarded to the firm by the Department, with the object of effecting an equitable distribution of contracts among qualified firms and of assuring that the interest of the public in having available a substantial number of qualified firms is protected.

13. Past performance on prior work with the Department. (See Appendix E).

14. Level of planned DBE utilization, if applicable.

15. Whether the consultant can complete the work within VDOT's established schedule. Who will be responsible to see that schedule is met?

16. Location where work will be performed. (If relevant to the type of services being provided). If there is sufficient justification for location to be a major factor in the selection process, it must be clearly stated in the RFP that location is a major consideration. The fact that a firm is not located in state or in the project area is not a legitimate reason not to select them. There must be a legitimate reason to use this selection criteria, not just personal preference.

17. Sensitivity to community involvement.

18. Team organization and previous experience as a team.

19. Management Ability - Clear responsibility should be invested in one individual, the project manager, for each project that the organization handles. The Department must be assured that this person's attention and participation will actually be devoted to the project.

20. Facilities and equipment owned by the consultant, including computer capability, reproduction and communication equipment, laboratory and testing equipment, or other specialized equipment applicable to the project under consideration.

21. The consultant's approach to the planning, organizing and management of a project effort, including communication procedures, approach to problem solving, data gathering methods, evaluation techniques and similar factors.

Short listing is based on the Expression of Interest and not on visits to our offices or with selection committee personnel. Usually there is no need for a consultant to try to find out everything there is to know about a project before being short listed. The Chief Engineer has requested that consultants call and make appointments before dropping by and to limit their number of visits. Project managers do not have the time to discuss in detail every project with every consultant prior to receipt of the Expression of Interest.

VDOT uses "competitive negotiation" to select consultants. Competitive negotiation is a selection method defined in the Virginia Public Procurement Act 11-37. The most important feature of competitive negotiations is that factors other than price are considered when selecting a consultant.

### 3.20 Short List Selection

After the project has been advertised, Selection Committee members should not individually discuss the project in detail with consultants. Any data that is available on the project should be made available for the consultant's independent review.

The Committee Chairperson or his/her representative will pick up all Expressions of Interest (EOI) from Administrative Services Division (ASD). It should be verified that all required information has been submitted. If all required information has not been submitted, the EOI shall be returned to the consultant with a letter of explanation. Each set

of EOI's will be consecutively numbered and the score sheets will be correspondingly numbered and the consultant and subconsultant names added. A set of EOI's and score sheets will be compiled for each Selection Committee member. The Chairperson will distribute the EOI's and score sheets to each Selection Committee member and explain the scope of services the consultant will need to provide. Any special consultant requirements should also be explained to the committee members. When district personnel are on the Selection Committee, the explanation of the scope of services may be provided over the telephone or by email and the EOIs sent by mail. A date will be set for the committee to meet, discuss and combine scores. After reviewing the names of all consultants and subconsultants submitting and before beginning the scoring, each committee member will sign the Certification of Non-Conflict of Interest (Figure 3\_) and return it to ASD. If there is any conflict of interest, the committee member will have to be removed and another member appointed. ASD will assure that this is done and made part of the procurement file. The ASD Procurement Manager or designee will provide oversight in a non-voting capacity on the short listing committees.

A copy of the Firm Data Sheet for each team submitting an EOI will be furnished to the Chairperson of the Consultant Coordinating Committee. This data will be compiled and will be furnished to the federal Department of Transportation upon request.

Each EOI shall be independently evaluated and scored by each Selection Committee member. Unless there are obvious errors or omissions, the present workload (\*) with the Department (Figure 3\_) and contracts currently being negotiated will be accepted as submitted by the consultant in the EOI and are to be entered in ink on the evaluation form by each committee member. Each consultant's Present Workload with VDOT worksheet will be attached to the combined score sheet. Pending work, for which the consultant has been selected but no proposal has been submitted, is the greater of the consultant's estimate for performing the services or the Department's planning estimate. Documentation of the Department's planning estimate will be dated and included in the project file. The RFP closing date will be the date of record for the outstanding dollar balance. The consultant's data in the RFP will be accepted as submitted unless an obvious error or omission is noticed and a correction made. The consultants and subconsultants making the short list will have their workload data verified using the FMS II and any pending contracts since the RFP closing date will be added. This could result in a firm being dropped from the short list and replaced by another.

(\*)Present Workload Definition - The present workload in each discipline, Professional Engineering, Landscape Architecture, Land Surveying, Architecture, Accounting, Actuarial Services, Law, Dentistry, Medicine, Pharmacy, or Optometry, with VDOT. All of the prime's outstanding dollar balances for current and pending contracts only (excluding their sub's contract dollar amounts) and the outstanding dollar balances for current and pending contracts of the proposed subs shall be combined together for use in the evaluation process. Only those disciplines listed above and applicable to the scope of work included in the procurement shall be scored. For example, if procuring an engineering service, only count outstanding engineering workload for that firm. The disciplines have been broken into the following categories: A. term survey contracts, B. preliminary engineering contracts, C. inspection contracts, and D. operation and maintenance contracts. For limited services term contracts, include the total amount of the contract. The Request for Proposal closing date will be the date used for reference for the outstanding dollar balance. For short list recheck, the date will be the day of the final short list

evaluation approval. Any firm claiming that some of its current workload has been exempted must submit a letter from the Chief Engineer/Assistant Commissioner authorizing the exemption. The exemption letters will be retained in the project file. If a firm has changed its name and is still working on VDOT projects acquired under the previous firm name, this workload will be counted as workload for the new firm. If firms merge and create a new firm, all workload acquired under the previous firm names will be counted as workload for the new firm.

Work being done under term survey contracts, inspection contracts, and operation and maintenance contracts will not be counted against preliminary engineering dollar amounts when a firm is submitting on preliminary engineering work. For term contracts, include the total amount of the contract. See the Present Workload with VDOT worksheet (Figure 3\_) and the Sample of Determination of Present Workload (Figure 3\_). A copy of each consultant's Present Workload with VDOT worksheet shall be attached to their short list score sheet.

The committee members will score each consultant independently in ink and include the date of scoring on the score sheet. If a change must be made to a score, the original score will be lined through in ink and the new score entered and initialed in ink. A consultant's total experience will be evaluated and not just prior VDOT experience. The Chairperson will have a meeting with the committee and an ASD representative to combine the individual scores and determine the weighted score for each EOI. Coordination with ASD will need to be made for the ASD representative to attend the short list meeting. When projects involve many disciplines, there may be non-voting members that assist the committee in evaluating the consultant's capabilities in a particular specialty area. The committee will rank EOI's in accordance with their numerical weighted score. A determination will be made if further data is needed to make the final ranking of consultants. Also at this time, the committee using the Financial Management System II (FMSII) (See Chapter 6) and any other resources within VDOT, will verify the dollar amount of present workload with the Department for the apparent short listed consultants and subconsultants. Only the short listed consultants will have their outstanding workload verified. To facilitate this process, the task of workload verification may be performed by support staff with the results and documentation given to the Committee Chairperson for use by all members in scoring. If the present workload has not been reported correctly, the ranking of the EOI's may change. (The committee may elect to verify workload after the review of the Consultant Performance Reports).

The Certification Regarding Debarment forms of the apparent short listed consultants and subconsultants should be reviewed by using the federal debarment list on the Construction Division's Internet site <http://www.vdot.state.va.us/conbbs/listpage.htm>. A copy of this list may be printed prior to the meeting. If a consultant or subconsultant has been debarred, the team should be removed from the short list and the reason noted in ink on their scoresheet.

The committee will then access the ASD Consultant Performance Report data base and review the reports (see Appendix E) for all prime consultants and subconsultants that are in the tentative short list. Past performance scores for the last three years will be considered. Any scores over three years old which have not been removed from the data base will not be considered. If a firm is new to VDOT or has no performance

reports on file, the committee will check some of the references shown in the Expression of Interest (EOI) and document their finding as part of the file.

Individual and combined score sheets will be certified by the ASD representative and retained in the file. ASD, through its Procurement Manager or designee, will ensure that any changes in scoring are explained, initialed, and dated in ink by the Committee member(s) whose score is changed.

The scores will be combined by the ASD representative during or immediately after this meeting. A list of all firms and their combined scores will be prepared for the file. The initial combined score sheet will be completed in ink. ASD will ensure that a Certification of Consultant Evaluation (Figure 3\_) is signed and dated by each Selection Committee member after proposals are reviewed and scored. The ASD Procurement Manager or designated representative will certify that all scoring was done properly (Figure 3\_). The Certification statement will verify that individual scores have been properly transferred to the master score sheet and that the scores indicated are those of the scorer and not based on outside influence. A copy of the individual and combined score sheets, workload documentation, and Certification Statements will be retained in the project file on all firms with the original copy retained by ASD.

It is expected that all selection committee members will meet together to compile short list scores. In cases where this is not feasible, such as a district representative having legitimate business reasons to be unable to attend a meeting in the central office, the score sheets and certification may be faxed to the ASD representative prior to the start of the meeting. The ASD representative will present the absent member's scores at the meeting. The absent member must be available to be contacted by telephone by the committee during the committee's meeting. This is necessary in case questions arise regarding the absent members scores, in case a review of the Consultant Performance Reports reveals low scores, or in case the consultant's workload is not verified. Once the committee has completed the scoring and any necessary changes are made in ink to the original score sheets, the absent member will send the original ink certification and score sheets to the ASD representative. The selection will not be finalized until the ASD representative has all original ink certifications and score sheets.

The Committee will determine how many firms are to participate in the interview phase. On State funded projects, the Code of Virginia requires two (2) or more firms. On Federally funded projects, Federal Regulations, Public Law 92-572, requires three (3) or more firms. If the top scores are relatively close, then more firms may be invited to make presentations. Once the short list is certified by the ASD representative, the committee proceeds with the interviews without requiring the approval of anyone else. Division Administrators are not to have any influence on the short list process.

The Committee Chairperson will prepare a short list summary sheet (Figure 3\_) listing all consultants and their scores. This summary sheet will be transmitted to the ASD representative by memorandum stating which firms have been selected for an interview. (Figure 3\_). The memorandum will be certified by ASD and returned to the Committee

Chairperson. Firms that are selected for presentations/interviews will be notified by the Chairperson (Figure 3\_) who will schedule their presentations/interviews while coordinating with ASD for a representative to be present at the presentations/interviews. This non-voting ASD representative will provide oversight during presentations/interviews. A list of the short listed firms, in alphabetical order, will be posted on the VDOT Opportunities Network Internet site.

The short listed firms are notified in writing (Figure 3\_) and may be requested to attend a detailed project briefing meeting. This notification letter should inform the consultant as to what points the Selection Committee expects to be covered at the presentation/interviews. Typical points the Selection Committee may desire to have presented may include:

- Understanding of the scope of work
- Approach or innovative solutions to the design or problem
- Tentative work elements
- Work sequence and schedules
- Past experience on projects bearing on the subject project or study
- Identification of person in responsible charge of the work
- Projected office workload and staff availability
- Personnel and time schedules
- Location of offices where the work will be done
- Proposed subconsultants, their qualifications and specific work assignments
- Unique qualifications or work methodology
- Track record for bringing in projects on time and within budget
- Quality control
- Team organization and who will perform each work element
- Public relations capabilities
- Computer software and equipment
- Budget control methods to control design costs

If held, the project briefing meeting is attended at the same time by all short listed firms and they are given the same information regarding the project. This is to put all firms on an equal footing. The Project Manager will describe the project and explain the services to be provided by the selected firm. The Project Manager will have available for review any existing information available to the consultants (geotechnical, road plans, surveys, etc.). Each of the selected firms will be requested to attend a technical presentation/interview and they are scheduled at this meeting. The consultants must ask any questions they have at this meeting. After the meeting, no contact with the Selection Committee is allowed.

The project briefing meeting is to insure that all short listed firms have a common understanding of the project, clear up any ambiguities, resolve any concerns the consultants have with the scope of work or contractual requirements. Representatives from the other divisions involved are requested to attend. It is not always possible to answer all questions on the spot and some may have to be responded to in writing. Any question

answered or any point clarified at a later date will be sent to all firms. This is intended to prevent one firm from learning new information that is not available to the other firms.

On simple projects or where time is critical, project briefing meetings may not be necessary. The required information may be provided to the consultant with their notice of being short listed. In this case, answers to questions raised by any consultant must be answered in writing with a copy sent to all the short listed firms.

### 3.30 Final Selection

Changes of firms in a consultant's team will not be permitted between submission of the EOI and the final selection. Should this occur, the consultant team will not be selected. This is to ensure fairness to all teams and to ensure that the team being interviewed is the same as the team that was short listed. Changes in personnel to be used on the project may occur. If it does, this information along with new resumes and organizational charts must be submitted at the presentation/interview. The Department should not make recommendations regarding team changes to the consultants.

The committee may elect to compile a list of questions or points of discussion for the consultant interviews/technical presentations concerning the project assignment and the firm's qualifications. If used, questions should be solicited from divisions which have work represented and from data contained in the Consultant Performance Reports. The Committee Chairperson will receive, combine, and distribute questions for technical interviews. The question sheet will be supplied to each Selection Committee member and the ASD Procurement Manager. (Figure 3\_). Although the complete answers to these questions will not be recorded, notes will be taken by the Selection Committee members during interviews which summarize the answers. A copy of this material will be retained in the project file with the original retained by ASD at the conclusion of the interview.

Typical questions for consultant presentations/interviews are:

- What is your firm's current overall workload and your ability to complete the work on this project in the required time?
- What special experience and qualifications does your firm have for the type work required on this project?
- What work will the subconsultant(s) and/or DBE perform? How do you plan to coordinate this work?
- What experience does the project team have on previous projects similar to the one under consideration?
- At what location(s) will the work be performed?
- What computer software will be used and is it available inhouse? Will you need to lease any software or contract an outside computer service?
- Who will be your project manager and what experience does he/she have?
- What will be your concept or approach to the project?
- What experience does your firm have in using IGrds? (If road plans involved)

- Who are the key employees that will work on the project and what is their experience on similar types of projects?
- Identify internal methods you use for schedule control?
- How will the engineering disciplines be coordinated?
- How will cost control be implemented and who will be responsible for cost control?
- What would be your approach to preparing preliminary plans and estimates for this project?
- How would you approach preparing any special provisions for this project?
- What are your firm's capabilities for evaluating subsurface exploration data and developing recommendations for substructure designs?
- Who will actually be taking the borings for the project and making the recommendations for the substructure designs? If this work is being subcontracted, how will it be subcontracted and who will be responsible for doing what?
- What innovative or alternate approaches will you use?
- What would be your approach to handling community involvement on this project?

Coordination will be made for a representative of ASD to attend the presentations. However, if at the last minute, the ASD representative is not able to attend or elects not to attend a presentation, the presentation will proceed and not be rescheduled.

If a Selection Committee member is late or absent for a presentation, the following options will be considered:

- Delay the start of the presentations while attempting to contact the absent member.
- Allow the presentations to proceed with only two committee members, provided one of the two present committee members is not from the division procuring the services. (If this option is exercised, and the absent committee member arrives late, that member cannot vote or participate in the selection process for any of the firms. All voting members must be present for all presentations.)
- At the discretion of the Committee Chairperson (or ASD representative in the absence of the Committee Chairperson), cancel the presentation(s) and reschedule at another time.

Firms usually only have a short time (1-2 weeks) to prepare for their presentations. When the interviews/technical presentations are held, the firms are allowed appropriate time (usually 30-45 minutes) to make a presentation of their firm's qualifications as well as their personnel's qualifications (as given in the Expression of Interest), hand out supplemental EOI information, give specific personnel manning assignments, present project concepts, and any comments they feel will be valuable in evaluating their firm, including a brief description of their approach to providing the needed services. Consultants should verify their team members. If there have been any personnel changes, since the EOI was prepared, this may be taken into consideration in the final ranking. Consultants should bring their subconsultants to interviews so they may present their qualifications and respond to questions. Points of discussion or questions related to that project will be asked. Each committee member asks any additional questions he/she has of the firm. Different divisions handle this in different ways. Some ask detailed questions and others expect the



firms to make their own presentations. No prepared questions should be asked of one firm that is not asked of all firms. ASD will ensure that any impromptu questions are documented along with the responses.

When the interviews are completed, the committee will discuss and rank the firms using narrative statements of strengths and weaknesses by each Committee member based on their EOI and interview. The firms receive an entirely new evaluation at the final presentation and their order of ranking may change from the short listing. The Committee Chairperson will meet with the Committee and ASD representative to prepare the Consultant Final Selection Narrative Sheet (Figure 3\_) to document the selection and rankings. The final decision shall be based on a majority decision and does not need to be unanimous. This form will be typed or completed in ink, and reviewed and signed by each committee member. Each team's narrative should be on a separate page. ASD will ensure that the consolidated narrative statement is typed or completed in ink and certify the process. When final, this new evaluation will consist of concise statements as to why a firm was or was not selected in relationship to the evaluation criteria and proposal's scope. Items to be considered in preparing the narrative are noted in the RFP (Figure 3\_). This document will be signed by each member of the Selection Committee and the ASD representative. There will be one combined narrative statement prepared by all members of the Committee and a copy retained in the project file by the Chairperson with the original copy retained by the ASD Procurement Manager. Another Certification of Consultant Evaluation (Figure 3\_) will be signed and dated in ink by each Selection Committee member and retained in the project file. A numerical score sheet will not be used for the final selection. The original of all certifications and other documents identified in these procedures to be retained by ASD must be provided to the ASD representative attending the meetings or sent to the ASD Procurement Manager.

#### 3.40 Attendees at Selection Committee Meetings

All persons attending Selection Committee meetings are to be reminded that the meetings are confidential and they are not allowed to discuss anything that happens at the meetings with anyone. Violators may be banned from future Selection Committee meetings.

Supervisors not on the Selection Committee may attend Selection Committee meetings for the purpose of evaluating their personnel in the consultant procurement area. However, they may not provide any comments or input into the selection process or scoring and may not be present after the interviews for the final deliberations and ranking of the consultants.

All Selection Committee members shall be VDOT employees. It is acceptable for a representative in the employment of a city or county to attend the interviews as a non-voting participant for projects in their jurisdiction. There is no requirement that the general public be admitted to Selection Committee meetings and it should not be allowed.

Non-voting technical experts from other divisions may attend the Selection Committee meetings to offer their comments regarding a firm's qualifications in a special field of expertise. (If desired, these people may be included as a member of the Selection

Committee. However, this requires additional EOI's to be submitted and the people to commit the time to review them.)

Persons not on the Selection Committee, other than invited non-voting technical experts, may not ask questions directly to the consultants. They may submit questions in writing for the Selection Committee to ask. However, these questions must be asked at all of the consultant interviews, not just one.

After the interviews, non-committee persons (except for supervisors of committee members) and technical experts may be allowed to offer comments or technical expertise regarding the qualifications of the consultants. Non-committee members and technical experts must attend every interview or they may not make comments regarding any of the firms. Only the Selection Committee members and the ASD representative may be present during the final deliberations and ranking of the consultants. The Selection Committee will meet as soon as possible following the last interview and rank the offerors in order of preference. The decision does not have to be unanimous, a simple majority is sufficient. Once the final decision has been made, the ranking cannot be changed unless approved by the Chief Engineer/Assistant Commissioner. The ASD representative must be present during any discussions regarding changing the selection. If approved by the Chief Engineer/Assistant Commissioner, the reasons for any change will be documented thoroughly in writing and signed by all members of the Selection Committee and the ASD representative.

### 3.50 Final Selection Approval

The requesting Division Administrator is notified of the selection in writing. The final approval authorization for the selection of a specific firm rests with the Division Administrator. Letters to the Division Administrator for approval of final selections shall have a copy of the narratives and certifications attached (brochures are not to be attached). The Division Administrator will notify the Chairperson in writing when the selection is approved. (Figure 3\_). Upon approval from the requesting Division Administrator, a letter confirming the selection is sent to the firm that was the committee's first choice by the Committee Chairperson (Figure 3\_) notifying the consultant of items requiring disclosures. The consultant shall be reminded in the letter that the prime and all subconsultants are required to submit their FAR audit data and Title VI form within 10 work days or the Department will begin negotiating with the next ranked firm. All short listed firms not selected are notified, in writing, by the Chairperson of the selected firm (Figure 3\_). The selected firm is also notified by telephone, and a date is established to begin negotiations. A list of the interviewed firms, in order of preference, will be posted on the VDOT Opportunities Network Internet site. [1] The date the posting is made is included with the list. Consultants have ten work days from this date in which to make a written appeal of the Department's announcement of intent to award a contract. The top selected firm is invited to a meeting to define the scope of the project and is requested to prepare a proposal. The ASD Procurement Manager will be furnished a copy of all materials related to the selection process. The Project Manager will keep the original Expression of Interest (EOI's) from all Offerors for at least 10 work days after the contract has been executed and

then dispose of all but those from the firms that were short listed. If a written protest of the announcement of intent to award a contract is received prior to the end of the 10 work days, all EOI's will be retained until the protest is resolved. The original date stamped copy of Expressions of Interest from firms that were short listed will be retained until three years after the contract is completed. For each Request for Proposal that is issued, only one prime consultant firm can be selected.

The Project Manager shall keep a copy of all procurement documents in the project file. ASD shall keep the original documents of the scoresheets of individuals and combined score sheet, certifications of non-conflict of interest, short list certifications, short list approval, final selection certification, final narratives, and final selection approval.

The ASD Procurement Manager should be advised of any changes that would affect the consultant selection at any point in the process so that proper documentation will be made.

### 3.60 Consultant Debriefings

Since debriefings are time consuming with a minimal return, and the Department cannot afford the time loss on such efforts, coupled with the fact that there is no legal requirement to conduct a debriefing, our guidelines for debriefings will be as follows:

- Only debrief new firms that made the short list for the first time if they request it.
- If a short listed firm requests a copy of the narrative comments from the selection process, a copy of the narrative for that firm only can be sent to them irrespective of whether or not they are a new firm.
- If a firm wants to know their relative standing from the screening process on any solicitation, they can be provided with the list which indicates their relative standing from the screening process without the associated scores. It is felt that the numerical scores are meaningless as they are based on that solicitation and that particular selection committee for that particular project.

It is VDOT policy not to volunteer to show a firm any information other than the above. However, additional information would have to be provided if requested. The exception to allowing this review is that information or sections of responses that are marked by the offeror as proprietary, including a reason, will not be shown to other offerors. As stated in Article 3, Section 11-65(D) of the Virginia Public Procurement Act, a public body is not required to furnish a statement of reasons why a particular proposal was not selected.

If the Committee Chairperson debriefs a firm, the debriefing shall be provided at the earliest possible time following contract award. They shall be conducted by the Selection Committee Chairperson who will be familiar with the rationale for the selection decision and contract award. It is essential that debriefing be conducted in a fair, objective, and impartial manner. Debriefing information given firms shall be factual and consistent with the evaluation and may provide suggestions to an offeror for improving future proposals. While interviewees may be informed of the areas in which their interviews were weak or deficient, point by point comparison with the interviews of other firms shall not be made.

Furthermore, debriefings shall not reveal the relative merits or technical standing of competitors. Debriefings will be documented by a summary kept in the file covering salient points and including dates and attendees.

# CHAPTER 4

CONTRACT  
NEGOTIATION



## CHAPTER 4 - CONTRACT NEGOTIATION

### 4.10 General

Virginia law requires state agencies using professional services to acquire the services of consultants by competitive negotiation. The process mandated by the Virginia Public Procurement Act requires a competitive selection of the consultants based on qualifications, followed by a negotiation process to establish a fee for the desired services. The objective of the total consultant acquisition process is the selection of a well qualified firm at a fee which is fair, competitive, and reasonable to both the state agency and the consultant. Negotiations should be conducted in good faith, recognizing that compromise by both parties may be required in some cases to achieve an equitable contract.

The negotiation portion of the consultant acquisition process consists of establishing agreement between the Department and the consultant on the following major points:

- Scope of services to be performed
- Work effort required (both quantity and level of personnel required)
- Distribution of work among levels of personnel
- Delineation of work to be provided by consultant, subconsultants and the Department
- Cost of services
  - Wage rates, overtime, etc. (or billing rates for some services)
  - Overhead costs
  - Direct expenses and subconsultant costs
- Net fee
- Method of compensation and other contract variables

ASD will randomly provide oversight in the negotiation process. Negotiations begin with a meeting with the top ranked firm to discuss in complete detail the scope of work and services to be provided and the requirements for the processing of an agreement (Figure 4\_). The project coordinator from each division involved in the procurement will attend the meeting. The following items are provided by VDOT to the consultant:

- All available project data.
- All necessary VDOT manuals, memoranda, specifications, etc.
- Draft copy of memorandum of agreement (MOA) prepared for the specific contract.

The following items are required from the consultant:

- Title VI Evaluation Report Form (EEO-D2) (Figure 4\_), if none has been submitted within the last twelve (12) months. Not required if firm has less than fifteen (15) employees. To be submitted within ten (10) work days of being notified in writing that they have been selected as the top ranked firm.

- Original Insurance Certificate, General, Workman Compensation, and/or Professional Liability. (Figure 4\_)
- Financial Information required by auditors. (Figure 4\_) (to be submitted within ten (10) work days of being notified in writing that they have been selected as the top ranked firm).
- Fee Proposal. (Figure 4\_ or 4\_) Includes:
  - Project salary cost
  - Man-hours required to do work
  - Project non-salary direct cost

Fiscal Division is notified by the Advance Notice of Pre-Award Audit Evaluation (Figure 4\_) that the consultant(s) have been selected and will be submitting FAR audit data.

#### 4.20 Scope of Work Meeting and Invitation to Submit Proposal

After receipt of approval from the Division Administrator of consultant selection and prior to actual negotiation of a contract, a pre-proposal meeting should be arranged with the top ranked consultant to review all matters pertaining to the scope, schedule, character, complexity, and method of compensation for the proposed services; to serve as a general orientation for the firm in its prospective work with the Department; and to issue an invitation to the consultant to submit a comprehensive fee proposal. It is essential that the Department and the consultant reach a concise understanding of the services to be provided prior to the consultant preparing their fee proposal. In order to do this, you must define the proposed scope of services and what is anticipated in each major sub-part of the services, and determine the individual tasks that will accomplish the scope of services.

Prior to the meeting, the project manager should become thoroughly familiar with the data, plans and other supporting information upon which the proposed work or services are to be based. Representatives of other divisions involved should attend the meeting to present their elements of the scope of work.

A checklist for presenting proposed work to consultants should be used to prepare for the meeting and serves as a checklist to follow during the meeting. (A sample Structure and Bridge Division Checklist is shown in Figure 4\_). The checklist covers administrative items, the scope of work, proposal format (A sample Structure and Bridge Division proposal format is shown in Figure 4\_), the Memorandum of Agreement, materials furnished to the consultant, monitoring of the work, and information required by Fiscal Division (Figure 4\_). A copy of the completed checklist is to be included in the project file.

All applicable materials such as a project description that accurately defines the limits of the work and major work elements, plans, studies, specifications, standards, office practice, survey, survey control, situation plans, geological borings, aerial photographs, mapping, sample existing plans, examples of project deliverables, inspection reports, etc. where available, should be assembled and presented to the consultant. If the services involve the relocation of consultant personnel on a long term basis where it is beneficial to VDOT to pay relocation expenses rather than a daily per diem rate, such as resident field

engineers or inspectors, furnish the consultant the Guidelines for Consultant Moving and Relocation Reimbursement (Figure 4\_).

Overhead for the subject services should be discussed and the consultant advised that VDOT policy requires a pre-award audit evaluation to be made of all firms. As a part of the audit, Fiscal Division will determine what the firm's overhead additive rate should be. This will be based on the Federal Acquisition Regulations.

#### 4.30 Department's Fee Estimate

Before receipt of the consultant's fee proposal, the Department shall prepare its own comprehensive independent estimate of the man-hours and all costs. Information received from the other involved Divisions shall be included in this overall estimate. The estimate prepared by the Project Manager will be used as comparative data during the evaluation of the proposal and the ultimate negotiations with the selected consultant firm. Consideration shall be given to the services to be rendered, the scope, complexity, and the nature of the project. Every effort should be made to ensure that VDOT estimates are as realistic and complete as possible before initiating negotiations. The independent Department estimate shall be revised as required during negotiations to reflect clarifications and changes of the services to be performed by the consultant.

The Project Manager may require assistance during the preparation of the estimate. Sources for this assistance are the more experienced personnel familiar with the preparation of man-hour and cost estimates, the Workload Assessment System (WAS) data, the Workload Planning System (WPS), man-hour graphs and data maintained by the division, and historical consultant fee proposal data. Input from other divisions regarding their work must be obtained.

The estimate will include:

- Manhours to perform each task and subtask identified in the Scope of Work
- Distribution of the manhours to the various employee classes required for the project
- Direct expenses required for the project
- Services provided by subconsultants or vendors
- Number of alternate designs or locations to be evaluated
- Level of detail required
- Numbers and types of meetings to be attended (citizen information meeting, public hearing, public workshop, elected officials, local staff, etc.)
- Numbers of reports and/or presentations required
- Schedule for project services

Most of VDOT's contracts are Cost Plus Net Fee. However, Lump Sum contracts are used on projects with clearly defined scopes of work. Fixed Billable Rates are used on limited services term contracts. See Section 4.130 for the appropriate type of contract.



ASD will monitor the use of cost estimates in the negotiation process, and provide guidance to determine that VDOT is paying the appropriate amount for services procured.

#### 4.40 Consultant's Fee Proposal

The consultant will compile the proposal in the proper format, including subconsultants' proposals, and submit all necessary information for review by the date designated by the Project Manager. Insurance certifications should be submitted at the same time as the fee proposal.

The Project Manager will request the selected consultant firm to submit its proposal with supporting cost or pricing data. The fee proposal must contain adequate information to support the basis for the costs contained in it and must contain a certification that the costs were proposed in a manner consistent with the requirements of the consultant's accounting system, specifically stating that costs proposed as direct expenses are not included in their overhead (Figure 4\_). The certification should be signed by the consultant's comptroller, chief financial officer, accountant, or other appropriate person who is knowledgeable of the consultant's normal accounting requirements.

Revisions of the proposal and supporting cost or pricing data may be made as required during negotiations to reflect changes in or clarification of the scope of the work to be performed by the consultant or findings derived from pre-award audits. Fee proposals on federally funded projects are not to be furnished to the FHWA. However, the Scope of Work on NHS projects will be furnished to the FHWA.

The consultant should be reminded of the type of agreement (lump sum, cost plus net fee, fixed billable rate, or other) to use and why. The importance of a complete breakdown of all elements of the proposal by individual tasks, stages and alternates (where applicable) should be stressed. Use of standard fee proposal sheets (Sample Structure and Bridge Division Fee Proposal Data Sheets Figure 4\_) by the consultant and subconsultants should be required.

Lump Sum fee proposals should be broken down in the same manner as cost plus net fee except that no contingency is allowed. While it is understood that with a lump sum proposal, the total fee is the only negotiable element, the other elements are asked for only to aid in the evaluation of the proposal.

#### Proposal Supporting Data:

- Description of the scope of the work
- Proposed schedule
- Man-hours required for each task, stage or element, by each category of personnel
- Average hourly rates for each category of personnel with payroll register or similar supporting documentation. (Rates are established using everyone in that classification).
- Estimated direct costs
- Subconsultant costs

- Payroll burden and overhead rates audited in accordance with FAR. Rates should be for a period not older than one year prior to the most recent fiscal year.
- Total number of contract drawings anticipated to be required for each individual set of plans
- Proposed project or bridge layout sketches
- Supporting data for computer/CADD rates

The consultant is required to carry adequate professional liability insurance throughout the life of the contract and to provide a certificate from the insurance carrier that such a policy is in affect. Insurance Certificates are maintained in the project file and should be updated annually by the consultant. Stipulated insurance shall be obtained prior to commencing work and shall be maintained during the entire term of the contract.

Since VDOT's contract is with the prime consultant, we do not require subconsultants to have insurance. However, it is highly recommended that the prime consultant not contract with any subconsultant that does not carry insurance.

The amount of professional liability insurance that should be carried by a consultant is based on their firm size and exposure to risk and is a function of their total number of projects or work assignments. No amount should be specified for them to carry, but have them propose the amount and conditions of the coverage. The amount is reviewed and the consultant advised of its acceptability or insufficiency. The consultant coverage should usually not be less than \$1 million per occurrence, but should not be less than the greater of 5% of the estimated construction cost of all VDOT projects which the consultant has under contract or \$100,000. The amount of any deductible should not be over an amount which can be covered by the firm's funds on hand or readily available.

The consultant will be required to have Worker's Compensation, Employers Liability, Commercial General Liability, and Automobile Liability insurance coverage. Worker's Compensation shall be a Standard Virginia Workers Compensation Policy with statutory requirements and benefits. Employers Liability shall be for a minimum of \$100,000. Commercial General Liability shall be for a minimum of \$500,000 combined single limit coverage. Automobile Liability shall be for a minimum of \$500,000 combined single limit for bodily injury and property damage per occurrence.

Agreements with firms who are self insured should be avoided.

#### 4.50 Proposal Evaluation

When the consultant's information is received, the Project Manager will distribute a copy of the fee proposal to each involved division for their review and comment, with a letter requesting that their comments be returned by a certain date, usually within seven to ten days.

Evaluation is the process of comparing the proposed fee with that of previous projects and that of office estimates for the project in question. Evaluation also assesses the reasons for

a fee being outside of acceptable limits. This lends direction to the negotiating procedure. Significant disagreement with VDOT's estimate may indicate that the consultant may not clearly understand the services to be provided.

Price is not a consideration in the selection of consultants to provide professional services. Once a consultant is selected, we are supposed to negotiate a contract which is fair and equitable and any cost, except overhead rate, may be negotiated. These include net fee, individual salaries, non-salary direct costs, etc. which are considered to be too high.

The mathematical accuracy of the fee proposal should be reviewed as well as the supporting data to determine if it adequately supports the costs contained in the fee proposal. Any errors, deficiencies, omissions, etc., noted during the review should be immediately brought to the attention of the consultant, and corrective data requested.

The fee proposal is analyzed and evaluated using VDOT's estimate and resources from Section 4.30 to arrive at a position for negotiation or approval. Evaluation should not be a thought process only. It is important that written documentation outlining the points of evaluation and its conclusions be a part of the correspondence file.

The fee proposal is examined to determine if it is reasonable and satisfactory using the following criteria as basis for analysis:

- Time limit, conditions, scope and description of the work are checked to see that they are correct and satisfactory
- Compare with fee data of consultants who have previously performed services for VDOT of a similar nature and complexity
- Comparison of the number of hours the consultant proposes are needed by each personnel category to perform each operation with those normally needed by in-office personnel to do similar work
- Comparison with data curves comparing manhours required for similar services and the use of WAS/WPS data
- Comparison of number of sheets of drawings and standards that the consultant estimates will be needed with those normally required by in-office design. Also, comparison of number of manhours required per sheet. A standard sheet should be counted as no more than 1/4 of a regular sheet
- Evaluation of direct expenses with particular attention to travel, mileage, per diem, and equipment rental. Analysis of proposed direct expenses should include determination if the proposed costs are competitive and whether the items are necessary for the performance of the required services
- Project management manhours should generally be less than 10% of the total proposed manhours.

Since the scope of work may not be totally defined on a cost plus net fee contract, a contingency is usually used on those contracts. This allows for minor changes in the scope of work without a supplemental agreement being prepared. Contingency also provides for adjustment in the overhead rate at the time of final audit. No contingency is used in

establishing a lump sum fee. The contingency rate generally ranges from 5% to 10%, with 10% most often used. Some types of construction services work may warrant the use of 15%. The scope of construction services work is difficult to define and dependent on the contractor's schedule. When a project is under construction, VDOT cannot stop a contractor from building a project while a supplemental agreement is negotiated with the consultant. Contingency is calculated on the fee base (Direct Labor + Payroll Burden + Overhead) and non-salary direct cost. Subconsultant contingency is included in its proposal and the prime gets no contingency on the subconsultant's services. Contingency may not be used by the consultant without written permission from VDOT.

The average wage rates shall be based on all personnel in a particular labor classification in the offices where the work will be performed. The consultant shall submit certified payroll information which identifies employees within the classes and their respective wage rates and an explanation of how the average wage rate was computed. A responsible company official must certify that the rates are actual on that particular date. An analysis of the proposed salary or billing rates should be performed by Fiscal Division to insure that they are in line for prevailing rates for the class of personnel. Rates may be negotiated for either individual employees or as averages for employee classifications.

Principals, partners, associates, CEO's, and similar titles are considered to be administrative and/or management functions whose costs have been included in the overhead markup of the rates for technical categories and shall not be listed separately. If a principal, etc., chooses to perform technical services on the project, they will bill at the comparable rate to the technical activity or function being performed. This will be at the highest technical rate of personnel in the classification providing the same service or function on all but fixed billable rate contracts. On fixed billable rate contracts, a principal, etc., must use the hourly rate established for the classification without his rate being used in establishing the hourly rate. A principal of a firm may perform the function of a project manager, especially in a small firm. In larger firms, a principal, associate or similar titled person may be assigned this responsibility. Regardless of title, this function is the same and the rate should be comparable to project managers of other firms in Virginia.

Consultants (geotechnical, aerial photography, testing labs, etc.) which normally work on a unit price basis probably cannot provide support for their unit prices for laboratory tests, drilling, flights, etc.; however, they should provide a copy of their standard fee schedule and shall attest that the fees contained thereon are their normal fees for such services.

The allowable overhead rates are determined by pre-award audit evaluation by Fiscal Division using FAR audits. If the consultant and subconsultants have FAR overhead rates which have been approved by Fiscal Division within the last year, they will check with Fiscal Division to see if it is acceptable to use those rates. Otherwise, a recent FAR audit, audited in compliance with cost principles contained in the Federal Acquisition Regulations of Part 31 of Title 48, Code of Federal Regulations, must be submitted by the consultant and all subconsultants within 10 work days of being notified of selection. The overhead audit shall be performed by an independent Certified Public Accountant, an agency of the federal government, another state transportation agency or similar independent audit

organization. The auditors shall be subject to approval by the Department's Fiscal Division. FAR audits are not required on subconsultants whose fees are estimated to be less than \$25,000. If the subconsultant's actual fee proposal is equal to or greater than \$25,000, a FAR audit must be submitted with the fee proposal. The Department's policy is that overhead rates are not negotiated. The consultant's actual approved overhead rate should be used. Overhead is not allowed on direct expenses nor subconsultant expenses.

VDOT generally requires its consultants to perform contracted services from their established home or branch offices; however, on special projects, the consultant may be required to establish a field office at or near the job site. A field office is defined as any office which the consultant/contractor specifically establishes or has furnished to him at or near the project site to be used exclusively for project purposes. The office may be a trailer, building, room or series of rooms established for the consultant personnel. Neither the number of personnel nor their mix by work classification shall have any bearing on this definition. The establishment of the field office, its manpower staffing and its operational costs will be determined by project needs, economy and efficiency and negotiated with the consultant. In most cases, the field office operations and staffing will be held to a minimum and the consultant's home or branch office will be expected to provide essential support services. The allowability of costs will be determined in accordance with criteria contained in the Code of Federal Regulations, Titles 23, 48 and 49 and other applicable Federal and State regulations. The decision on whether a cost should be allowed as a direct or indirect cost depends largely on the consultant's normal and customary practices for estimating and accounting. These practices should be outlined in the consultant's annual overhead audit and should be followed during contract pricing and negotiations.

If the proposed services require the establishment of a field office or the consultant employees are working out of a VDOT provided office (such as Construction Engineering Inspection services), a separate audited field overhead rate must be submitted. If the consultant does not have an audited field office overhead rate, a field overhead rate should be prepared by the consultant. The field overhead rate shall be reviewed and approved by Fiscal Division. If no audited field overhead rate is available, a provisional overhead rate (overhead plus payroll burden) of 75% will be used.

VDOT allows facilities cost of capital for firms owning their own offices. However, it must not be included in the fee base when determining the net fee.

Secretarial costs related to a project may be billed to that project as long as this is a standard policy of the firm and is applied to all clients.

The allowable lodging and meal and incidental expense rates to be used should not exceed the rates allowed by Fiscal Division for Department employees. Use the rate the consultant proposes unless it exceeds the amount allowable for Department employees. Trips that do not involve an overnight stay should not be shown as a full days per diem in the proposal. For a day trip without lodging, no meals will be paid for. Procedures governing travel and payment of moving expenses are available in the Office of the

Comptroller's "Moving and Relocation Policies and Procedures."  
([www.state.va.us/doa/docs/procedures/pdfdocs/20345.pdf](http://www.state.va.us/doa/docs/procedures/pdfdocs/20345.pdf))

The State employee mileage allowance is used for consultant travel by personal vehicle. Vehicle allowances should be based on the most economical vehicle class meeting the needs of the project. Parking fees and tolls are reimbursable. Public transportation must be for tourist or coach class accommodations.

The costs for in-house produced consultant services, including printing and copying, which are charged directly to projects, must not be included in overhead and must be consistently charged to all clients.

Sufficient documentation must be provided with the fee proposal to support the basis for all proposed direct expenses. Written quotes from vendors, invoices reflecting prices paid on previous purchases, copies of catalog pages, etc. may be used as support for the proposed prices. Verbal quotes from a minimum of one vendor may be acceptable for acquisitions up to \$5,000, if adequate supporting documentation (name and telephone number of the person furnishing the price quote) is provided. The acquisition of any individual item or service costing more than \$5,000, but less than \$15,000, shall be supported by at least three written quotes, when competition exists. The acquisition of any individual item or service costing \$15,000 or more shall be supported by at least four written quotes, when competition exists.

Normally, consultants are expected to have the necessary equipment, software, computers and tools of the trade to accomplish the services they have been selected to provide. In order for the cost of a non-salary direct cost to be directly billable to a VDOT project, the item must be consumed by the project. Non-consumable items include, but are not limited to, fax machines, computers, software, books, refrigerators, copy machines, beepers, helmets, tape measures and fire extinguishers. Since the Department has no overhead rate limitations, and the consultant firm may use non-consumable items on other projects that provide no benefit to the Department, costs of these type items should be recovered in the consultant's overhead.

If a consultant proposes to purchase or lease computer hardware and/or software for use on a project, the proposal must be reviewed by Information Technology Division and the Memorandum of Agreement signed by them. In this case, include a place for their signature in the MOA. The purchase or lease of any hardware and/or software, which a consultant should normally have to perform the required services, generally will not be allowed.

Consultants must submit documentation to support how their computer rates are calculated. The method of charging CADD costs to Department projects is optional with the individual consultant. The costs may be charged as direct or indirect, depending on the consultant's normal accounting practices. However, consistency in charging the costs is required. CADD charges may be billed on an hourly rate, not to exceed the rate set by Fiscal Division, as long as the consultant bills every client this way. If the consultant elects

to charge CADD costs as direct, their accounting and estimating systems must support this method. The methodology for determining the rates as well as the billing rates must be approved as part of the consultant's independent annual overhead audit. If all clients are not billed on an hourly rate, then CADD charges must be included in their overheads. Regardless of whether CADD is treated as direct or indirect costs, the consultant's accounting system must support the treatment. Cost estimates or fee proposals must be prepared in a manner consistent with the consultant's accounting system.

For multi-year contracts, consultants may be allowed escalation of their direct salaries to allow for inflationary increases. For limited services, term contracts, a separate rate for each year of the contract should be established. Consultants must submit certified documentation to support how their salary escalation rates are calculated and to show they are consistent with past increases given to employees. The escalation may not exceed the rate set by Fiscal Division. During the first year of a multi-year contract, half of the annual escalation rate may be allowed.

Time limits or time to complete the work should be a matter proposed by the consultant using regular, not premium time (overtime).

Administrative add-on charges for the handling of subconsultants by the prime consultant, in addition to the overhead, labor, and fixed net fee which are a normal part of the contract, are not allowed. These administrative fees, or whatever they are proposed under, are charges which the consultant is already being reimbursed for through his overhead and net fee portion of the contract. When the Department enters into a contract with a consultant, we agree to pay the consultant for his labor, administrative overhead (which includes the operation cost of his home, branch, or field offices) plus a net fee on his labor and overhead costs. In addition, we also reimburse the consultant for any out of pocket expenses on a dollar for dollar basis. These additional expenses include subconsultants. When the Department allows the consultant to include an additional administrative add-on for the handling of subconsultants, we are actually allowing the consultant to bill us twice for what we are already paying him for in our reimbursement for labor, overhead, and net fee. The same people who process the subconsultant paper work for the prime consultant are either being directly reimbursed as part of the direct labor, or their salary and expense cost are part of their overhead. Any additional administrative add ons contained in a contract over and above the overhead, net fee, and facilities capital cost of money is not allowed.

After a review of the fee proposal, it may be necessary to call the consultant in for a meeting in order to determine that the consultant fully understands the scope and intent of the services and to discuss adjustment of the fee or time limit.

#### 4.60 Net Fee

Net fee is the dollar amount established by negotiation to cover the consultant's profit, miscellaneous expenses, and other factors that may be considered under the applicable regulations that are not paid for otherwise. Net fee is intended to compensate the

consultant for those normal business expenses which are excluded from allowable overhead by Federal Regulation as well as provide the consultant with a reasonable profit. Since cost plus a percentage of the cost contracts are prohibited, the expression of the net fee as a percentage of consultant costs should be used by the Department only as a test of the prudence of the net fee proposal and not as a substitute for negotiation.

Federal-Aid Policy Guide 23 CFR 172A, Section 172.9(d) Net Fees states: "The determination of the amount of net fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The establishment of net fee shall be project specific."

The Department has established that the net fee shall vary from [5] 8% to 12% of the direct labor plus loaded labor with the actual FAR overhead rate used, but the overhead rate shall not exceed [5] 156% in determining the net fee. The following factors should be used as a guide for determining the maximum allowable net fee on a project with the actual net fee being a negotiated amount:

1. Complexity/Relative Difficulty of Work - extent to which the consultant applies his engineering knowledge, experience, technical skills, and independent judgement as listed below from the simplest to the most complex:

Projects or structures of simplest, utilitarian character which are without complication of design or detail and require a minimum of detail, design or effort.

Projects or structures of conventional character and detail, requiring normal detail, design or effort.

Projects or structures of moderate complexity requiring a moderate amount of detail, design or effort.

Projects or structures of exceptional character and complexity requiring comparatively large amounts of detail, design or effort.

Monumental projects or structures requiring precise detailing, consummate design skills or extraordinary effort.

2. Size of Job - the larger the contract maximum compensation, the smaller the fixed fee percentage.
3. Duration/Period of Performance - the longer the contract duration, the larger the fixed fee percentage. Contracts over 23 months are to be weighted the same.
4. Degree of Cost Risk Assumed by the Consultant - where work involves no risk or the degree of risk is very small, the weighting should be low; as the degree of risk increases, the weighting should be increased. Cost plus fixed fee contracts generally have a lower risk than lump sum contracts. Construction Engineering Inspection



contracts generally involve less risk. Other things to be considered: the portion of the services to be done by subconsultants (the more services provided by the consultant, the lower the factor), nature of the services, where the services are to be performed, low overhead costs, reasonableness of negotiated costs, etc.

Some of the above factors, such as size of job and duration of performance, may conflict with each other and individual judgement must be used in determining the net fee. However, one person in each division should be responsible for determining the net fees so that uniformity will exist in the division. Each factor should be evaluated in the [5] 8% to 12% range and a combined average determined. Because of the differences in the types of services among the different divisions, the determination of net fee is an individual division's responsibility.

Net fee is not allowed on non-salary direct expenses. A prime consultant may not apply a net fee on a subconsultant's expenses.

#### 4.70 Title VI Evaluation Report

All consultants and subconsultants, with fifteen (15) or more employees, performing work for the Department are required to submit a Title VI Evaluation Report. The report(s) are to be submitted within ten (10) work days of written notification of selection. A copy of the completed Title VI Evaluation Report (EEO-D2) (Figure \_\_) will be forwarded to the EO Division for review and approval by letter (Figure 4\_\_). Current certifications on file may be used in lieu of the consultant submitting a Title VI Evaluation Report on every project. Firms with less than fifteen (15) employees should state this in writing and the letter maintained in the project file.

In the event of a finding of non-compliance, the negotiating official will seek resolution with the consultant with the assistance of the EO Division. If resolution is not reached, the Department will go to the number two firm to negotiate the contract.

#### 4.80 Negotiations

Upon receipt of all comments from the involved divisions, and all of the consultant's materials, a meeting is set up between VDOT and the Consultant, for discussion of man-hours and project cost.

The purpose of this meeting is to negotiate a contract that is acceptable to both parties, using the Department's estimate and the consultant's proposal, within the Department's guidelines. Upon reaching an equitable solution, the fee proposal is revised and compiled for approval. The agreed upon proposal is furnished to Fiscal Division enabling the pre-award audit evaluation to be initiated (Figure 4\_\_). Under normal circumstances, pre-award audits are completed within thirty calendar (30) days from date all required documentation is received from the consultant (Figure 3\_\_).

If a contract that is acceptable to both parties cannot be agreed upon, negotiations will be terminated and the next ranked firm will be asked to submit a proposal. This process may continue until negotiations have been attempted with all firms that were interviewed. If an agreement cannot be reached with a firm that was interviewed, the Division Administrator will be consulted for approval to go to the next ranked firm in the short list or to re-advertise the project.

Using the conclusions gained from the evaluation (Section 4.30), a meeting should be conducted with the consultant to negotiate the fee or any parts, elements or adjuncts to it. VDOT estimates and consultant proposals seldom agree. Many times this is from a misunderstanding of the scope of the work. This is resolved through a review of the manhours and through negotiations. ASD should be informed when negotiations will take place. ASD will occasionally attend negotiating sessions to monitor them.

Having a prepared agenda prior to the negotiating meeting will foster meaningful discussion. It is also a technique that will establish the tone and professionalism of the negotiating session. It highlights issues to be negotiated, encourages consultant concessions, and fosters the Project Manager's control of meeting.

The Department shall conduct negotiations on the scope of services and professional compensation initially with the highest ranked firm. Only one consultant may be negotiated with at any one time. If a fair, reasonable and mutually satisfactory contract cannot be negotiated with that firm, the Department shall formally terminate the negotiations and notify the firm in writing. Negotiations then shall be initiated with the second-ranked firm and this procedure shall be continued until a fair, reasonable and mutually satisfactory contract has been negotiated. In most cases, an agreement will be reached with the first consultant; however, on infrequent occasions it may be necessary to go to another firm.

The agency's personnel have their own expert independent estimates as benchmarks from which the parties can arrive at fair and reasonable compensation decisions. It is actually during the detailed negotiation process that the scope and extent of the project and the particular requirements for the execution of the work are really defined in sufficient detail and depth to arrive at a knowledgeable agreement. Until the agency representatives and the consultant selected on the basis of qualifications have engaged in this sometimes lengthy negotiation process, it is not possible to have a true meeting of the minds on the many aspects of the work to be undertaken, or its cost.

During the negotiations, the project requirements will be discussed in detail with the selected firm. Changes in the scope to clarify the intent or better define the lines of responsibility will be considered. By conscientious effort and a thorough evaluation of the project needs, the Project Manager can enhance his relationship with the Consultant selected for the job. A well defined Scope of Work will provide a better understanding of responsibilities and will instill a feeling of cooperative teamwork between the Consultant and the Department. The objective of both parties will be to efficiently provide a quality project.

Negotiation is necessary when there is a need to adjust any significant differences in the perspective of the scope of work and the estimates of the cost of the work by the agency and by the consultant. Such differences include discrepancies in the estimates of man-hours by grade levels for each of the work classifications, the proposed wage rates, other direct and indirect costs, and the proposed fixed fee; discrepancies in the understanding of the scope of work required in any of the work classifications or of the work to be done by the state or other consultants; or in the event of any need to explore the use of innovative methods.

The end result of the negotiation process is a better mutual understanding of what is to be done and by whom, when it is to be done, and the amount and method of reimbursement. The submission of a revised proposal by the consultant documents this understanding.

Negotiation takes place when two parties, each with its own viewpoints and objectives, seek to reach a mutually satisfying agreement on, or settlement of, a matter of common concern. Negotiation is practiced by all of us daily. From simple issues such as deciding on a restaurant for lunch, to complex negotiations for multifaceted design or construction inspection contracts, to strategic arms limitation talks, certain basic principles should be kept in mind.

Negotiations are an important part of a Project Manager's work. Negotiation is a complex process that relies on the judgement, tact, common sense, abilities and sensitivities of the persons involved. To be successful, negotiation should be approached with a high degree of professionalism. It is not an "I win, you lose" process. The ultimate goal of all negotiations is to reach an agreement - a mutually satisfying conclusion to differences.

There is no "cookie-cutter" process for negotiating. Every negotiation must be approached with open mindedness and high moral purpose. The process is not to change peoples minds, but rather to show them the limitless possibilities for mutual satisfaction of needs.

Negotiations should take place only between those persons who have the authority to make binding commitments. You must be prepared to trade and you must know which points can be compromised and which points cannot be changed. To be successful, the needs of all parties must be satisfied.

Each negotiating session should be approached with the confidence that you will succeed. Always remain calm and collected. Let your best professional image show through. Never lose your temper, no matter how excited you get. Develop a "poker face" to conceal your emotions and never relax or become complacent.

If you are flexible and your terms are reasonable, your chances for success are greatly improved. Take your time on the more important decisions. Call for a caucus or recess to another time if necessary. You should never convey a feeling of superiority or smugness, no matter how much you know about the other party's position. Stick to your principles and do not compromise your objectives. Regardless of the outcome, every negotiating session

has some value to everyone involved. Be sure to end each meeting on a positive note and express your appreciation to the appropriate people.

Negotiation consists of four equally important steps: Preparation for Negotiation, Conduct of Negotiation, Post Negotiation Actions and Review of Lessons Learned.

### Preparation

- Plan sufficient time for the negotiation process. Insufficient time leads to hasty decisions. The consultant will sense the pressure of time and take advantage of the situation.
- Be well prepared. Make a methodical study of the proposal and compare costs, terms and conditions. Have the necessary facts and information to support your position. Do not go into a session without having done your homework. This information is essential to sound negotiation and will provide the negotiator with the facts required to place the burden on the consultant to justify costs or contractual terms that appear unwarranted. Notes should be made of issues which are likely to arise during negotiation and plans made to deal with these issues. Determine from the proposals those areas in which assistance may be required; technical, engineering, legal, fiscal, etc.
- Know what you want to achieve. Plan your presentation and anticipate the other party's presentation. Establish the parameters of discussion for each point in the scope of services and consultant proposal to be negotiated. Establish a range of acceptability. Know what you must have, you hope to have, and what you can concede. Identify minor issues that might be traded for more important ones.
- Determine the bargaining authority of the consultant representative. Insist on dealing with someone with full authority to commit the consultant. Otherwise, you may have to do the job twice.
- Arrange for adequate facilities for the negotiations.
- Prepare an agenda.
- Negotiate with the confidence gained from advanced preparation.

### Conducting Negotiations

- There are many ways in which negotiations may be conducted. Therefore, each negotiator must develop their own techniques which they can utilize most effectively.
- From the beginning, establish and maintain one's own credibility and believability as a basis of mutual trust.
- Outline the important contract issues and obtain the consultant's position on each. The consultant may not want to consider the logic of the negotiator's position until he/she has explained his/her side of the issue. Try to identify the areas of weakness in the consultant's position.
- Make sure both sides are discussing the same issues and level of effort required. This reduces the possibility of misunderstanding considerably and allows the negotiation to get started on a note of agreement.
- The negotiator should then make his or her own position known in general terms,

citing such areas as policy, budget limitations or restrictions as justification for the position. This places the burden on the consultant to find a way to comply or justify the exception. Present your position persuasively and defend your position assertively.

- The negotiator brings into play the information from the VDOT estimate. When the consultant disputes the validity of the information, require him to provide the specific information on which his position is based.
- Reach an agreement on the most important issues before discussing the less important items. If agreement cannot be reached on the major items, the negotiator may use the minor issues for bargaining on the major issues. Be prepared to explore alternatives in the event of disagreement. Try to settle one point before moving to the next.
- Reach clarity of agreement on all contract terms.
- One person should be designated as the spokesperson and negotiate for the agency. Team participation in the actual negotiation may be required but the agency's position is finalized by the spokesperson. Negotiate on an even basis. If the consultant has legal or technical support, bring your qualified counterparts.
- Avoid interruption, arguments or quick deals.
- Be ethical, fair and firm. Gain respect and trust. Listen openly and honestly.
- Attempt to reach a WIN-WIN result, i.e., both parties at the conclusion of the negotiation believe they have reached a satisfactory contract. In a win-win negotiation, concessions by both sides are inevitable.
- Avoid marathon meetings; nothing is gained by trying to outlast others. Don't negotiate every minute item, but keep your overall goal in mind.
- Know your support persons. Brief them before the meeting as to what their role is to be.
- Learn the value of silence. Listen and don't interrupt.
- Defer getting into sensitive areas - take appropriate steps if tempers begin to flare.
- Keep the meeting on the subject and moving along.
- Be aggressive, but courteous and do not rush the other side. Make it easy for others to agree with you. Know when to stop "countering discussions" and when to reach conclusions.
- Always concentrate on the subject at hand and try not to rush through the meeting.
- Be punctual, concise, organized and say exactly what you mean.
- Go the extra distance not to offend anyone.
- Always be careful not to embarrass anyone who is present. If someone makes a mistake or thoughtless remark, overlook it and go on to something else.
- Appoint someone to the task of keeping notes, preferably someone not actively involved in the negotiations, but who knows what should be recorded.
- Don't accept a consultant's first no.
- Don't be unreasonable or unfair.
- Don't make a concession without obtaining a concession.
- Handling disagreements - look for alternatives that are mutually acceptable.
- Recap what was agreed to during the negotiations.
- End negotiations on a cordial basis.

### Post Negotiation Actions

- Be sure all participants fully understand what has been agreed to.
- Prepare minutes of negotiation meetings summarizing the negotiations.
- Prepare the final contract, obtain necessary signature and any required supporting documents.

### Review of Lessons Learned

- Critique the negotiations with members of your team, pointing out the strong and weak points observed during the negotiation.

### Don'ts of Negotiation

- Underestimate the ability of the consultant.
- Disclose the specific contents of VDOT's estimate.
- Negotiate areas beyond the scope of the solicitation.
- Make a concession without obtaining a concession.
- Accept the first no.
- Be unreasonable or unfair.
- Negotiate to the point that the price is no longer fair and reasonable.

Minutes of the meeting are to be kept to document the file regarding negotiations. Results of the negotiation may be reflected immediately in the proposal or the consultant may elect to study the matter and respond by letter or by submitting a revised proposal.

### 4.90 Pre-Award Audit Evaluation

As soon as an agreement is reached with the consultant regarding the manhours and direct costs in the final revised fee proposal, it is sent to Fiscal Division (Figure 4\_) with a request for a Pre-Award Audit Evaluation. To assist the Division Administrator in the overall evaluation of the proposal, the Fiscal Manager shall make a pre-award audit evaluation of all proposed agreements to determine if the provisions of the proposed agreement are in compliance with State and Federal regulations. The pre-award audit should, to the fullest extent possible, determine the financial capability of the firm, the adequacy of the organization's accounting system, propriety of overhead, labor additives, etc. Although it is the responsibility of the Division Administrator to evaluate reasonableness of costs, it is the responsibility of the Fiscal Manager to identify elements of costs which are unresolved (no basis for the proposed cost) or unallowable. This is accomplished as follows:

- Determine that the Accounting System provides:
  - The ability to record and report financial data in accordance with generally accepted accounting principles and the Code of Federal Regulations, Title 48, Federal Acquisition Regulations System (FAR), Chapter 1, Part 31 and these Guidelines.

- The ability to accumulate and segregate reasonable, allowable and allocable costs through the use of a cost accounting system.
- A system of record keeping to ensure the costs billed to State will be supported by adequate documentation and will be in compliance with the terms of the contract and applicable Federal and State regulations.
- Procedures to retain accounting records and source documentation as required by the terms of the contract.
- A system of internal control which provides reasonable assurance that assets are protected; financial data records and statements are reliable; and errors and irregularities are promptly discovered, reported and corrected.

- Direct Labor

Verify labor rates utilized in the cost proposal to current payroll records. Escalation of salaries at one half of the allowable rate set by Fiscal Division will be allowed for the first year of the contract and the full rate for each subsequent year. No allowance will be made for when, during the year, the consultant actually gives salary increases.

- Payroll Burden and Overhead Rates

Determine that the Payroll Burden and Overhead rates utilized in the cost proposal are representative of actual costs of the consultant, less any non-allowable cost items in accordance with the Code of Federal Regulations Title 48, Federal Acquisition Regulations, Chapter 1, Part 31.2 and Attachment C of the VDOT standard Memorandum of Agreement. An Internal Control Statement shall accompany of the FAR audit prepared by the independent CPA firm.

- Non-Salary Direct Cost

Determine that the non-salary direct costs (i.e.; travel expenses, reproduction, computer rental rate, etc.) proposed are reasonable and necessary for the performance of the contract. CADD and PC rates shall be audited by the consultant's CPA firm and shall not exceed the hourly rate set by Fiscal Division.

- Net Fee

Determine that the net fee utilized in the cost proposal is reasonable and within VDOT guidelines. This should be the net fee of the prime consultant only. Subconsultant net fees are included in their separate fee proposals.

- Contingency

Determine that the contingency utilized in the cost proposal is reasonable and computed properly.

- Total maximum Compensation

Determine that it includes the total of all costs, net fee, and contingency.

- Agreement

Verify that the net fee, actual costs, and total maximum compensation are carried correctly from the cost proposal to the agreement. The contract amounts should be rounded to whole dollars with no cents.

When the pre-award evaluation is completed, a pre-award letter (Figure 4\_) is sent to the contracting officer detailing the findings. The consultant may be required to furnish additional information for review for unresolved project costs. Final adjustments are made to the fee proposal to include the results of the audit.

Pre-Award Audit Evaluations do not need to be furnished to the FHWA on any project. The final Scope of Work is furnished to the FHWA on federally funded NHS projects.

#### 4.100 Documentation of Negotiations

During the entire negotiation process, a record should be kept of all the issues raised and their resolution. It is also necessary to document how pre-award audit issues are handled.

#### 4.110 Memorandum of Agreement

Once a proposal is finalized, the Project Manager will draft a Memorandum of Agreement, using the Department's standard Memorandum of Agreement which is maintained on the computer (501016w58831) of the co-chairman of the Consultant Coordinating Committee and the Structure and Bridge Division server (0501cosnb, Guidelin, Guidelin.obd). The standard agreement is essentially a sample contract, broadly drafted to encompass a variety of projects and situations. The Project Manager selects those portions of the standard agreement that apply to their particular situation and deletes any sections that are not pertinent to the current contract. Standard sections applicable to all agreements (Attachment A) shall not be deleted or modified. The standard agreement format should be followed as explicitly as possible in so far as it is applicable to work for which it is to cover. If payment is to be made to an address other than that shown in the MOA, the MOA should include an additional remittance address. The draft agreement will be reviewed by all divisions involved in the contract. Drafts of the MOA should be reviewed by one person in the managing division for consistency and content prior to the MOA being typed and transmitted to the Attorney General's Office. The draft agreement should be reviewed with the consultant to assure that it meets with their approval. Any changes that are made to the wording or general content of the agreement, must be specifically identified and reviewed by the Attorney General's Office. Changes in standard wording used in all VDOT contracts should not be revised simply because the consultant does not agree with it.

Unless the agreement for multi-phase professional service contracts include provisions for a future phase, with the fee to be negotiated at a later date, all future phases are



considered as a new project. The Department is not obligated to use the same consultant for all phases of a project. To continue with a consultant, who has completed a previous phase of the project, will depend upon:

- Satisfactory performance by the consultant of the previous work or services.
- A decision by the Department that it is in the public's best interest to proceed with the consultant for subsequent work or service.
- Negotiation of a mutually satisfactory agreement for the subsequent phase(s).

#### 4.120 Limited Services Term Contracts

Limited service term contracts may be used for engaging a consultant's services for multiple small projects within an established maximum compensation and over an established time frame. These contracts are utilized on small projects where the cost of advertising the project as an individual contract is high compared to the cost of the project, or where sufficient time does not exist to procure consultant services through the normal procurement process. Typical services which may be contracted for include: surveying, geotechnical, design, construction and bridge inspection, etc. The RFP shall include a description of the nature of the potential projects, the disciplines/expertise required, and the nature of services to be required. A consultant having a limited service term contract is not prohibited from competing for, and being selected for, regular RFPs issued by the Department. Only one limited services term contract may be awarded from each RFP issued by the Department. Only projects which have actually been assigned under limited services term contracts, not the total limit on the contract, will be included in the consultant's workload with the Department and properly entered into FMS II to reflect this.

A limited services term contract serves as an umbrella agreement for the type of services to be provided. These contracts may cover a specific geographic area, may be on a regional basis, or may be statewide. The Department does not represent or guarantee that the consultant will receive any work under a limited services term contract.

Payment for services is based on fixed billable rates for each classification/discipline established in the MOA. The fixed billable rates will include salary, overhead, and net fee. Individual projects are assigned under these contracts and fees established based on the fixed billable rates for each classification/discipline. There must be a written individual Letter of Agreement (LOA), signed by the procuring division's Division Administrator, for any services provided under the umbrella MOA. Each LOA will include a scope of work or services, a fee proposal, and start and completion dates. Work performed under these contracts must be coordinated and tracked by the Central Office divisions and should have a Central Office coordinator assigned to the contract to track and control expenditures.

The individual Letters of Agreements may be either cost plus net fee or lump sum, depending on whether the scope of services and cost can be reasonably estimated. The maximum compensation payable for LOAs will be established using the fixed billable rates and the fixed non-salary direct costs. The cost plus net fee letter agreement salary costs will be billed based on the certified record of the number of hours worked times the fixed

billable rate for that classification/discipline. The lump sum cost will be billed based on the percentage of the services completed. Adjustments to the fixed billable rates will not be allowed for changes in overhead.

Any changes to an approved LOA requires a written new LOA. No extra work, time extensions, or increases in the maximum amount payable shall be authorized without an approved written new LOA.

The Department and the consultant are obligated to fulfill the requirements of all individual letter agreements, including supplements thereto, issued even though the term for the contract has concluded. The Department may extend the term of an existing contract to allow completion of any services undertaken but not completed during the original term of the contract.

#### 4.130 Types of Compensation

The type of agreement is generally defined by the method of compensation for services. The usual methods of payment are:

- Lump Sum
- Cost per unit of work
- Cost plus net fee
- Specific rates of compensation (fixed billable rates)
- Percentage of construction cost

Lump sum and cost plus a net fee are the most used methods. All the methods are acceptable except for percentage of construction cost. This type of contract is illegal in Virginia and prohibited by Federal procurement regulations.

**Lump Sum** - By this method, the consultant performs the services stated in the agreement for an agreed amount as prime compensation. This method of payment is appropriate only if the extent, scope, complexity, character and duration of the work to be required can be established to a degree that just compensation can be determined and evaluated by all parties at the time of negotiations. This method may be applicable to the design of small bridges or other designs with well defined scopes. Lump Sum performance periods should not exceed two years and Lump Sum amounts should not exceed \$1,000,000 without Fiscal Division's approval.

**Cost Per Unit of Work** - By this method, the consultant is paid on the basis of the work performed. This method is appropriate when cost of the work per unit can be determined in advance with reasonable accuracy, but the extent of the work is indefinite. Provisions specify what is included in the price paid.

**Cost Plus a Net Fee** - By this method, the consultant is reimbursed for his costs and receives in addition a predetermined fixed amount as a net fee. This method of payment is appropriate when the extent, scope, complexity, character or duration is not clearly defined

or where work is of a nature that the Department does not have the experience or knowledge to permit an evaluation of the consultant's proposal as required to support a lump sum amount. The consultant is reimbursed for all eligible direct and indirect costs within defined limits plus a predetermined amount as a net fee. This type of agreement shall have appended to it the complete breakdown of costs as required to be submitted for the proposal. The agreement requires a statement of the net fee and maximum compensation payable for each major element or stage of design.

Specific Rates of Compensation (Fixed Billable Rates) - By this method, the consultant is paid at an agreed and supported specific fixed hourly or daily rate for each class of employee directly engaged in the work. Such rates of pay include the consultant's estimated costs, overhead and net fee. This method is applicable to limited services term contracts.

Percentage of Construction Cost - This method is based on a concept of correlation between engineering design cost and construction cost. A fixed agreed upon percentage of the estimated construction cost is set as the total compensation for services. This method of payment is not used in Virginia.

# CHAPTER 5

CONTRACT  
IMPLEMENTATION



## CHAPTER 5 - CONTRACT IMPLEMENTATION

At this stage, the Scope of Work and Fee Proposal have been negotiated and the Pre-award Audit Evaluation has been completed. Approval has been obtained from the supporting divisions as to the Scope of Work and negotiated man-hours. Title VI and insurance certification forms should have been received from consultants.

Approval of the Memorandum of Agreement (MOA) and Commonwealth Transportation Board (CTB) Resolution, if applicable, is to be requested from the Attorney General's Office. The following information should be in or attached to the transmittal letter to the Assistant Attorney General (Figure 5\_):

- Two copies of the MOA
- CTB Resolution (if applicable)
- Statement indicating compliance with the Virginia Public Procurement Act
- Statement indicating that solicitations of expressions of interest were properly sought
- Statement indicating that the MOA was prepared in accordance with the VDOT Guidelines
- The number of firms that responded to the solicitations
- The number of firms selected by the committee for interview or further investigations
- The firm selected as first choice and why
- Statement indicating that work is within the scope of professional services
- If applicable, a draft of the resolution for the Commonwealth Transportation Board
- Certification that the MOA has been proofread.

The Department uses a standard agreement format. However, each agreement must be reviewed and approved by the Office of the Attorney General (Figure 5\_) for compliance with all legal requirements and protection of Department interests. Also, Fiscal Division (Figure 5\_) is required to review and approve the agreement and proposal. Fiscal Division will not approve the agreement prior to the AG's office approval.

Fee proposals are not required to be sent to FHWA. For federally funded NHS projects, provide the FHWA with a copy of the final Scope of Work and the executed MOA.

After approval has been received from the appropriate divisions or representatives and the Attorney General's Office, all appropriate recommendations are to be incorporated in the final Memorandum of Agreement. The results of the Pre-Award Audit evaluation should be reviewed, and corrections should be made to the Fee Proposal, if necessary.

Final approval is now requested from the Fiscal Division (Figure 5\_). All recommendations and comments should have been incorporated in the final Memorandum of Agreement. The original copy of the consultant's insurance certification is to be filed with the final MOA which is held by the Department.

Two (2) copies of the final Memorandum of Agreement are to be sent to the consultant for his review and signature, by the appropriate officer of the firm.

#### Consultant Signature Requirements:

1. Individuals - A contract with an individual shall be signed by that individual. A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed name and the words, "an individual doing business as \_\_\_\_\_" (insert name of firm).

2. Partnerships - A contract with a partnership shall be signed in the partnership name, followed by the typed name and title of the person authorized to sign. The Project Manager shall ensure that the individual signing for the partnership has authority to bind the partnership.

3. Corporations - A contract with a corporation shall be signed in the corporate name, followed by the signature and typed name and title of the person authorized to sign. The Project Manager shall ensure that the person signing for the corporation has authority to bind the corporation.

4. Joint Ventures - A contract with joint ventures may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner prescribed above for each type of participant.

If an Escrow Agreement is requested by the Consultant, three copies of form C-8 (Figure 5\_) are sent along with the MOA to the Consultant. Form C-8 is available from the Construction Division or on the Internet from the Opportunities Network. The laws of the Commonwealth of Virginia require that the Escrow Agent have its principal office in Virginia. Banks having their principal offices in other states are unacceptable for use as Escrow Agents. Escrow Agreements (Figure 5\_), must be submitted to Fiscal Division prior to submitting any vouchers. If the consultant does not want an Escrow Agreement, this should be verified in writing (Figure 5\_) with a copy being furnished to Fiscal Division.

A resolution (Figure 5\_) and fact sheet (Figure 5\_) are to be prepared and approved by the Division Administrator, when CTB action is required. Resolutions for the Commonwealth Transportation Board need to be prepared only for contracts that exceed \$300,000. Contracts that are between \$150,000 and \$300,000 are to be approved by the Commissioner, and contracts less than \$150,000 are to be approved by the Chief Engineer or Assistant Commissioner. Once the Division Administrator has approved the format and content of the resolution, it is sent to the Attorney General's Office for review. (It may be transmitted with the draft Memorandum of Agreement.) When a contract is Lump Sum, the CTB Resolution and Fact Sheet should not contain any reference to a Net Fee.

Resolutions for the CTB (Figure 5\_) are to be prepared in Microsoft Word. After review and approval by the AG's office, a copy of the resolution is to be e-mailed to the Commissioner's Executive Secretary. A cover letter should be sent with the resolution noting that it is a resolution for the next CTB meeting. Fact Sheets are prepared using the Fact Sheet Format for Board (Figure 5\_) format.

Programming and Scheduling Division or Urban Division is to be notified by letter (Figure 5\_) of the consultant's final fees and the current total preliminary engineering cost. For secondary road projects, this information is to be sent to the District Administrator and the Secondary Roads Engineer (Figure 5\_). A response verifying the availability of the necessary funds should be received. (Some divisions administer special funds that do not require this procedure to be followed).

When the MOA is ready for approval, the following items are to be sent to the Chief Engineer or Assistant Commissioner for execution by memorandum (Figure 5\_):

- Memorandum of Agreement - 2 originals signed by consultant and reviewed and initialed by Attorney General's Office and Fiscal Division.  
**(Information Technology Division (ITD) approval is also required during negotiations for agreements which include purchase or lease of computer hardware and/or software. ITD must also initial these MOA's.)**
- Escrow agreement for execution (3 original copies if applicable)
- Commonwealth Transportation Board (CTB) Resolution and Fact Sheet (if contract is greater than \$300,000)
- Project location map

All documentation is to be presented to the Chief Engineer or Assistant Commissioner by noon, seventeen (17) calendar days, excluding holidays, prior to the CTB Meeting, on contracts requiring their approval. The CTB Meeting is normally held on the third Thursday of each month.

After the appropriate authority has executed the Memorandum of Agreement, it is then returned to the Project Manager along with the resolution, if applicable, for distribution and notification of award of the contract. Copies of the executed agreement are sent along with the letter of official notification to (Figure 5\_):

- The Consultant - one original signed copy of the agreement
- District Administrator - one copy of the agreement (if applicable)
- Fiscal Division - one copy of the agreement, CTB resolution, Escrow Agreement, consultant notice to proceed
- Central File - original signed copy of the agreement
- FHWA (NHS projects) - one copy of the agreement
- Other involved divisions or residency (if they are to administer the contract) - one copy each of the agreement
- Project File - one copy of the agreement

Manuals, guidelines, information, etc., required by the Consultant to accomplish the work, should be provided as required.

The project will be entered on the Financial Management System II (FMS II) within seven (7) calendar days of the MOA being fully executed.

After the agreement has been fully executed, a Consultant's Estimate Voucher (Figure 5\_) is prepared. A supply of blank forms is furnished to the consultant. The consultant is also furnished a supply of the Consultant Progress Report (Figure 5\_). The Consultants may create the forms on a computer spreadsheet so long as they are close approximations of VDOT forms.

A written notice to proceed will be sent to the consultant. **The consultant shall not proceed with any work prior to being given a written notice to proceed.** A notice to proceed shall not be issued prior to the Memorandum of Agreement being fully executed.

Subconsultants - Our agreement with the prime consultant requires that all provisions of our agreement [5] be included in any contracts they have with subconsultants. Since our contract with the prime consultants requires them to include certain provisions of our contract in any subcontract, Project Managers should obtain a copy of any subcontracts for professional services and review them prior to giving the prime consultant a notice to proceed.

In some cases, the scope of the work will have been so well defined during negotiations and the consultant is familiar enough with VDOT work, that no start up meeting is required. In most cases, it will be desirable to have a start up meeting with the consultant to discuss the scope of work, format of receivables, lines of communication, project schedules, priorities, milestones, progress reports, vouchers, etc. and to furnish sample plans/reports and any additional information or data that has become available.

A set of the date/time stamped Expressions of Interest of firms not short listed shall be retained for at least ten (10) work days after the contract has been executed and then disposed of.

If any consultant files a written notice of intent to protest the selection, all Expressions of Interest shall be retained until the protest is resolved. Expressions of Interest for the short listed firms shall be retained for three years after the contract is complete.



# CHAPTER 6

CONSULTANT  
CONTRACT  
DATA  
TRACKING



## CHAPTER 6 - CONSULTANT CONTRACT DATA TRACKING

The Department utilizes a computer program, the Financial Management System II (FMS II), to track contract data on all consultant work, including supplemental agreements, vouchers and man-hour reports. FMS II also provides data on the value of work each consultant has with the Department and the amount of funds allocated.

Each division is responsible for entering, updating and maintaining its own pertinent files, in accordance with the procedure outlined in FMS II User Manuals.

Contracts are to be added to FMS II within seven (7) work days of the contract being executed.

Voucher input on the FMS II needs to be within two work days of a voucher being sent to Fiscal Division. The consultant shall submit FMS II input data with the voucher giving man-hours and dollars spent during the payment period for the prime and all subconsultants. This data will be broken out by the divisions involved in the project and furnished to them. This information along with a copy of the front sheet of the voucher are to be submitted to the division's FMS II data input person when the voucher is processed.

Supplemental agreement data needs to be added to the FMS II within seven (7) work days of the supplement being executed.

Contracts are to be deleted from FMS II within seven (7) work days of the final voucher being sent to Fiscal Division. The Consultant's Performance Report shall be complete, and its date entered on FMS II when the contract is deleted.

# CHAPTER 7

PAYMENT  
PROCESS/  
VOUCHERS



## CHAPTER 7 - PAYMENT PROCESS / VOUCHER

### 7.10 Voucher Instructions

After written notice to proceed is given, work can begin on the project. As the project proceeds, the consultant will need to submit vouchers for payment. If the consultant desired for payment to be sent to an address other than the office address given in the MOA, a remittance address should have been included in the MOA. The consultant will be furnished a copy of the voucher format that is required by the Department (Figure 7\_). These forms may be replicated by the consultant on computer spreadsheets which have the capability to produce a similar format. As the project proceeds, the consultant will submit vouchers in duplicate: the original for Fiscal Division and one copy for the project coordinator. An extra copy should be submitted for each additional division that will be reviewing the voucher. The voucher is to be date stamped when received by the project manager, reviewed as expeditiously as possible, and one copy sent to the Fiscal Division within seven (7) calendar days, so that it can be paid within the thirty (30) calendar day requirement. If errors are found in a voucher that require the consultant to submit a revision, a new date received will be stamped on the voucher on the date the revision is received.

The usual frequency for submittal of vouchers for cost plus net fee contracts is once a month. On other types of contracts, the vouchers shall be submitted in accordance with the schedule set forth in the MOA. Vouchers are to be submitted only when accumulated charges exceed \$500.00. Amounts entered on pages 1 through 3 of the Consultant Estimate Voucher (Figure 7\_) should be rounded to the nearest dollar.

When the Consultant Estimate Voucher contains billings from subconsultants, the first sheet of each subconsultant's voucher should be distinctly labelled "SUB-CONSULTANT" in large, bold letters.

The consultant is required to submit monthly progress reports to show the status of the services. The consultant should use any existing standard VDOT progress report forms (Figure 7\_). The progress report should show the percentage of work accomplished, a narrative of the actual work performed this period and significant activities anticipated for the next month. These progress schedules should note important milestones along the life of the project. The consultant should submit his progress schedule format to the Project Manager for approval prior to the first voucher submittal. The progress of the services is reviewed to see that consultant is on schedule and will complete the services on schedule. If it is felt that proper progress is not being made, the consultant is notified and reminded that they must meet the time schedule specified in the Memorandum of Agreement. No Consultant's Estimate Voucher will be paid without a progress report covering the period of the voucher. No voucher should be approved for payment when the percentage of money requested is more than 10% ahead of the actual percentage of completion of the work.

When vouchers show a percentage or stage beyond a point, which by prior agreement, certain reviews should have been completed and have not, payment should not be approved and the consultant should be questioned.

On projects involving bridges, the progress report must indicate the percent completion of each individual bridge.

Consultant Contract Data Tracking information shall be submitted by the consultant with the voucher (Figure 7\_).

Once the voucher and progress schedule have been checked by the project coordinator and found to be in agreement, Forms FD-AP-01 and FD-AP-02 must be filled out with the correct information from the voucher (Figure 7\_). The vouchers, FD-AP-01, FD-AP-02 and progress reports are then sent to an individual designated by the Division Administrator for approval and signature. If review and approval by other divisions is required, the voucher and progress report must be sent to the other divisions.

Once the voucher, FD-AP-01 and FD-AP-02 have been approved, a letter (Figure 7\_) must be sent to the consultants, informing them that the voucher was approved and has been processed for payment. The voucher information and the contract data is then entered into FMS II

One signed voucher (original), along with a copy of the letter, for payment (Figure 7\_) are sent to Fiscal Division. The FMS II data is to be entered within two working days of the date the voucher is submitted to the Fiscal Division.

The Department [5] does not withhold retainage on consultant vouchers. Prime consultants should be encouraged to not withhold retainage on subconsultants.

After current FAR rates are provided to the Department, final audits will be completed within twelve (12) months of satisfactory completion of the contract as defined in the MOA. [5]

When the final voucher is sent to Fiscal Division, the transmittal letter should say it is the final voucher and closes out the project. The first sheet of the voucher should be marked "Final Voucher."

## 7.20 Review of Invoices

The Project Manager will review the invoice to determine if the progress claimed by the consultant is reasonable and consistent based on knowledge of the project progress. The Project Manager will also assure the billing is reasonable and in accordance with the Agreement and other written authorizations. No consultant is to be allowed to perform or invoice for any services beyond the original or supplemented contract scope of work without a fully justified and properly executed supplemental agreement.

Review primarily consists of verifying the percentages of completion upon which the voucher is based, verifying current overhead rates, reviewing nonsalary direct costs and checking math.

The purchase of items to be used on the project but which are not consumed by the project and are kept by the consultant for use on other projects are not billable to the project. These items include computers, software, specifications or reference books.

VDOT pays reasonable direct costs on cost plus net fee contracts. A consultant spending \$30-\$40 on a single meal is not considered to be a reasonable cost. Per diem rates shall be in accordance with Fiscal Division's guidelines for state employees.

The Department does not pay for consultants to relocate personnel to a Virginia office in order to perform work in a Virginia office. If a consultant is required to furnish on a long term basis a full time Resident Engineer or construction inspectors during the construction of VDOT's project, relocation expenses will be reimbursed in accordance with the Office of the Comptroller's "Moving and Relocation Policies and Procedures." (Figure 7\_). ([www.state.va.us/doa/docs/procedures/pdfdocs/20345.pdf](http://www.state.va.us/doa/docs/procedures/pdfdocs/20345.pdf))

Consultants are not permitted to work overtime unless authorized to do so in writing by the Project Manager. Non-exempt employees may be paid at time and a half. Others are paid at their regular rate. Overtime is generally not allowed except in special cases where VDOT requires the project to be completed on a rush schedule and where it is the only way the completion date may be met. A consultant's own scheduling problems are not justification for overtime. A copy of the letter authorizing overtime should be sent to Fiscal Division.

Consultants are not permitted to use any of the contingency without the written permission of VDOT.

Common voucher errors made by consultants:

- Salaried payroll costs are not supported with adequate documentation.
- Sub-consultant work not clearly distinguished from prime.
- All phases/stages of work must be included with each estimate.
- Errors in net fee percentage.
- Errors in addition.
- Previously billed amounts incorrect.
- Exceeding allowable hotel and M&IE expenses.

### 7.30 Annual FAR Audits

Upon annual submittal of FAR audit information and the approval of a new overhead and payroll burden rate by Fiscal Division, the consultant must start using the new rate on future billings for cost plus net fee contracts. The consultant is not permitted to use the new rate to go back and make adjustments for work previously billed. This

adjustment will be made at the time of final audit. New overhead rates do not change the maximum compensation payable in the contract.

#### 7.40 Voucher Package Distribution

Voucher	1 - Project File 1 - Fiscal Division (original) 1 - Other Divisions Involved
Cover Letter & Progress Report	1 - Project File 1 - Central File (original) 1 - Other Divisions Involved
CTIS Data	1 - Project File 1 - FMS II Input Person 1 - Other Divisions Involved (if requested)

#### 7.50 Interim and Final Audits

The Department requires a final audit by the Fiscal Division after the completion of the project on cost plus net fee and fixed billable rate contracts. This is accomplished as follows:

##### General

- Prepare a schedule of the consultant's estimate vouchers listing and summarizing the following costs:
  - Direct Salaries
  - Payroll Burden and Overhead
  - Net Fee
  - Non-salary Direct Costs
  - Sub-consultant costs
  - Sub-total of Amount Billed
  - [5]
  - Amount Due Consultant
- Verify the hourly rates used to develop the average rate or fixed billable rate per classification to determine that they were not misrepresented.
- Review contracts to verify that the direct costs billed are allowed in accordance with the terms of agreement.
- Verify the net-fee billed is in compliance with the agreement and any supplements.
- Determine that the consultant has complied with prior years audit exceptions.

- Verify hours billed and labor cost on the estimate voucher by reviewing consultant time sheets and payroll records.
- Verify non-salary direct costs to source documents, i.e., travel expense vouchers, rental agreements, paid invoices, etc. Verify that they are allowable by the terms of the agreement.
- Review all billed costs for reasonableness. Question costs that are not considered reasonable and require justification for the costs from the consultant.
- Verify that the proper rates were billed on fixed billable rate contracts.

#### Payroll Burden and Overhead

Prepare a schedule of provisional overhead rates billed versus audited overhead rates, adjusting any differences in accordance with the terms and conditions of the contract.

#### Exit Conference

Upon completion of the audit, review audit findings with controller or appropriate consultant representative.

#### Audit Report

Report audit findings to appropriate individual of the consulting firm, with copy of report to contracting officer.

#### 7.60 Items Eligible For Reimbursement As Consultant's Costs

- A. When the method of compensation includes payment of the consultant's actual cost, the following items (B thru F) of cost are reimbursable to the extent that they are in compliance with Federal Acquisition Regulations, Part 31 and Federal-Aid Policy Guide 23 CFR 172A.
- B. Direct Salary Costs are the Direct Productive Payroll (actual wages paid all employees of the consultant regardless of job classification when directly engaged in work necessary to fulfill the terms of the agreement) less the premium portion of such wages paid for overtime.
  1. Related costs which are normally paid by the consultant may include items such as:
    - a. Wages paid or accrued for vacation time.
    - b. Wages paid for holidays and for sick, military, jury, and other authorized leave.



- c. Group and Workmen's compensation insurance costs.
  - d. Bonus, incentive compensation or deferred compensation which is an established practice of the firm and which does not exceed the Department's policy limiting these costs to what it considers "reasonable" in accordance with the Federal Acquisition Regulations.
  - e. Social Security and Unemployment taxes.
  - f. Pension or retirement benefits.
  - g. Group Medical Plan and Life Insurance Premiums.
2. The allocation of the related costs shall be in accordance with the consultant's established policy and with accepted accounting practices. Generally, these costs will be expressed as a percentage of the Direct Salary Costs.
  3. Principals, partners, associates, CEOs, and similar titles are considered to be administrative and/or management functions whose costs have been included in the overhead markup of the rates for technical categories. Salaries of principals of the firm who perform technical services on the project may be included in the Direct Salary Costs for all times they are productively engaged in work necessary to fulfill the terms of the agreement, providing this is the consultant's normal practice and that the cost is not also included in Indirect Salary Costs. The maximum amount of a principal's salary, which the Department will reimburse either directly or indirectly, shall be as determined by the Department's policy as to what is considered "reasonable" in accordance with Federal Acquisition Regulations. If principals of the consultant perform routine services, such as standard design and drafting work which could be performed by lesser-salaried personnel, the wage rates billed directly for those services shall not exceed those rates paid to the consultant's salaried personnel performing the same or similar work. A principal of a firm may perform the function of a project manager, especially in a small firm. In larger firms, a principal, associate or similar titled person may be assigned this responsibility. Regardless of title, this function is the same and the marked-up rate should be comparable to project managers of other firms in Virginia.
  4. Premium Wages for overtime paid to employees, in accordance with the consultant's normal practice and directly chargeable to the project, may be reimbursed as Direct Productive Payroll with no surcharge for related costs provided the consultant obtained prior written approval from the Department to work overtime.
- C. Direct Non-salary Costs are actual and reasonable non-salary costs incurred specifically in fulfilling the terms of the agreement, such as:
1. Travel, food and lodging, including automotive equipment rentals, fuel, maintenance, tolls, mileage or per diem paid by the consultant for personal expenses of only his own employees in accordance with his normal company policy and Department limits. Costs of alcoholic beverages are unallowable.

2. Communications, including telephone, fax, telegraph, postage, parcel post, air freight and package express.
  3. Reproductions including photographs, prints and offset work.
  4. Outside professional service and laboratory charges, including those for surveys, photogrammetry, soils investigations and testing and other charges for engineers, surveyors, lawyers, sociologists, economists, model makers, architects, scientists and other specialists. These charges must be authorized in advance by the Department to be reimbursable.
  5. Electronic computer charges including those for computers and related equipment operated by the consultant and those for outside computer services, if consistently billed as a direct cost to all clients. Rates for computers and related equipment operated by the consultant shall be in accordance with established rates charged to outside clients (not to exceed \$6.00 per hour) for similar services, except that such rates shall be billed at cost (no profit) since the consultant's profit is used in the consultant's billing.
  6. Special Equipment as authorized in writing by the Department and materials required for and used solely in the fulfillment of the agreement. The consultant shall deliver all such equipment and material to the Department upon completion of the work.
  7. Special insurance for the project that is requested in writing by the Department.
  8. Rental charges for equipment owned by the consultant at his established rates, reduced by the portion of the rate which is profit and less any portion charged elsewhere to indirect costs.
  9. Costs of renting vehicles or equipment. Costs, such as maintenance and minor or running repairs incident to operating such rented items, that are not included in the rental rate. Costs incident to major repair and overhaul are unallowable.
- D. Indirect Costs (or overhead costs) are the remaining costs of the consultant's business operations after the assignment to all his clients of all Direct Costs, exclusive of costs ineligible for compensation such as uncollectable charges, advertising, amusement, entertainment, contributions, donations, interest on borrowed money and the like. The consultant's established practices for allocation of eligible Indirect Costs to each project shall be used if in accordance with generally accepted accounting procedures. In general, these costs will be expressed as a percentage of the Direct Salary Costs charged to the consultant's clients.

E. Indirect Salary Costs are the actual wages paid to all employees of the consultant for work not directly chargeable to individual clients plus the same related costs as previously outlined in Direct Salary Costs if not included in Direct Cost, such as:

1. Wages paid for preparation of proposals.
2. Severance wages paid to employees.
3. Wages paid for negotiating (not promoting) new business.
4. Research and development wages. This cost is primarily the salaries of the consultant's personnel in the development of new computer programs and labor saving devices. Eligible costs will be as defined in Part 31 of the Federal Acquisition Regulations.
5. Training and education wages. This cost consists of the salaries paid employees while attending classes at accredited colleges or universities for post graduate work in subjects related to the consultant's practice. Also included in this category is attendance at meetings and seminars conducted by recognized technical and professional organizations.
6. General office administration and supervisory salaries.
7. Salaries in connection with the recruitment of employees.
8. Salaries paid to furnish access to or copies of records, if not reimbursed by the Client.
9. Salaries of principals for time actively engaged in the preparation of proposals and preagreement negotiation (not promotion) of new business.

F. Indirect Non-Salary Costs are all non-salary costs of the Consultant's business operations eligible for compensation (Section C.) not directly chargeable to individual clients, such as:

1. Travel, food and lodging (see Direct Non-Salary Costs).
2. Communications, including telephone, fax, telegraph, postage, parcel posts, etc.
3. Reproduction costs, including blueprints, photography, photostats, etc.

4. Electronic computer charges including those for computers and related equipment operated by the consultant and those for outside computer services if not consistently billed as a direct cost to all clients. Computer costs in connection with research and development, bookkeeping, new business negotiation and Non-Salary Costs. (Section C.5). Eligible research and development costs will be as defined in Part 31 of the Federal Acquisition Regulations.
5. Professional service costs. This includes costs of professional services rendered by members of a particular profession such as legal and accounting, which are necessary to the proper operation of the business, but who are not members of the consultant's staff.
6. Sundry taxes levied by Federal, State and Local agencies exclusive of Federal Income Tax.
7. Premiums of all business insurance other than those included in direct costs to clients.
8. Office supplies.
9. Rent, heat, power, light and janitorial services.
10. Licenses and dues in technical and professional organizations.
11. Maintenance and repair of office equipment.
12. Rentals of equipment (see Direct Non-Salary Costs).
13. Costs of meetings and conferences.
14. Library expenses, including technical books, magazines, journals and supplies in connection with education and training.
15. Cost of duplicating records as required by the client.
16. Relocation costs for employees.
17. Depreciation.
18. Recruiting expenses including advertising agency fees and travel and subsistence incidental thereto.
19. Life insurance premiums in lieu of additional compensation for key employees and principals, provided the beneficiary is the employee's estate or his relative and is not the consultant or another key employee or principal of the consultant.

#### 7.70 Final Payment

If, as a result of the final audit, the consultant owes the Department a reimbursement of some payments, Fiscal Division will secure the reimbursement. If the Department owes the consultant additional compensation, the Project Manager will have the consultant submit another Consultant Estimate Voucher to claim the payment. If the project has been closed-out to charges, the Project Manager will have to contact the funding division and have the project opened for additional charges.

# CHAPTER 8

CONTRACT  
ADMINISTRATION/  
REVIEWS



## CHAPTER 8 - CONTRACT ADMINISTRATION / REVIEWS

### 8.10 Project Administration

The Department shall assign or designate a Project Manager to oversee the contract and insure that the consultant performs in accordance with the terms, conditions, and specifications of its contract.

Project Managers are responsible for the control of their assigned projects. They must be fully aware of the project objectives and the proper flow of the work activities. This responsibility includes coordination with the functional work areas to assure the blending of all activities into a quality product produced within the desired schedule.

The overall duties of a VDOT Project Manager include:

- Develop overall project goals, plans, and schedules.
- Verify financial aspects of each project regarding work program budgets, construction budgets, and other related funding requirements; and confirm that projects are in the work program and that funds are available.
- Maintain project files and satisfy the requirements for record keeping, filing, and reporting.
- Provide liaison with consultants in preliminary stage, design stage and during construction.
- Ensures that no work is done or costs incurred until written authorization is given by the Department.
- Monitor project progress and compliance with contract requirements.
- Review and approve consultant invoices and status reports. Process invoices for payment in a timely fashion.
- Gather, coordinate and transmit information required to complete the contractual services.
- Monitor and coordinate with other divisions who have an involvement in the project to be sure they are developing their portion of the project.
- Work with other functional specialists and divisions to coordinate plans and schedules, obtain commitments, and resolve problems.
- Coordinate and provide liaison with other entities such as Federal Highway Administration (FHWA), city, county, and State regulatory agencies, environmental resource agencies, citizen groups, and elected and appointed government officials.
- Review preliminary, intermediate, pre-final and final plans and special provisions. Distribute and obtain approval of plans and special provisions from other divisions and outside agencies.
- Answer inquiries relating to the Department's practices and specifications, including AASHTO modifications and geometric standards.
- Prepare construction cost estimates and process the plans for advertisement.
- Make on-site visits to consultant and subconsultant offices.

- Monitor DBE participation goals.
- Prepare Consultant Performance Reports at six month intervals and upon expiration of the agreement.
- Assist field personnel in solving construction problems. Coordinate field inquiries regarding the review of shop drawings.
- Coordinate and process plan revisions.
- Identify changes to scope of work, review man-hour estimates and prepare contract amendments (supplemental agreements).
- Participate in the review of consultant claims and time extension requests.
- Provide technical information and report project status to upper management.

Communication is the means by which the Project Manager is able to establish goals. Without being an effective communicator, a person cannot be an effective Project Manager, regardless of technical competence.

Coordination may involve: field survey, aerial photography, traffic, environmental, right-of-way, corridor analysis, hydraulic and hydrologic analysis, geotechnical, value engineering, road plans, structure and bridge plans, public involvement, specifications, FHWA, signs, signals, lighting, utilities, drainage, navigation permit, quality control reviews, etc.

Status meetings and other project reviews are necessary for the Project Manager to satisfactorily control his assigned project. These meetings will allow him to evaluate the work progress and to determine if any activities should be redirected to meet the goals of the project. Through effective leadership by the Project Manager, these meetings will also provide information and produce decisions for the efficient advancement of the project to the next level of completion.

In addition to the scheduled meetings, the Project Manager must anticipate other meetings or reviews which may be required. Quality Assurance audits, coordination meetings and value engineering reviews may require the Project Manager's participation during the project development. The satisfactory accomplishment of these meetings will be necessary for the success of the project.

In the event the consultant's performance is unsatisfactory or it is deemed in the best interest of VDOT to cease work on a project, a written notification to stop work shall be issued to the consultant. The consultant may not proceed with work on the project unless a subsequent written authorization to proceed is given. If VDOT decides to terminate the contract, it must be done in compliance with the terms and conditions stated in the Memorandum of Agreement.

## 8.20 Review of Consultant Performance and Services

It will be the responsibility of the Project Manager and each division involved in the contract to evaluate the consultant's performance, including named subconsultants performing any major type of work, each six (6) months over the duration of the project. The Consultant

Performance Report, AS-415, (Figure 8\_) will be used for the evaluation. The evaluation process must be taken seriously by the Project Manager. The analysis must be completely fair and honest; personal dislikes and biased opinions of the firm must be set aside. Ratings shall be based on facts and documentation and not personal prejudices. The evaluation should consider only the performance of the consultant during the production of the project. Attention must be paid to the rating values. A consultant that fully meets the terms and conditions of the contract receives a score of three. Scores higher than three must result from exception performance from which VDOT realizes some benefit to the schedule or budget. Scores less than three without any supporting comments will result in the performance report being returned to the rater for the comments to be added. Attention must be paid to the utilization of DBEs and appropriate scores given.

The reports will be used as back-up data for future justification in using that firm for work. Each division involved in a contract is responsible for completing performance reports for their portion of the work. An office visit is not mandatory when completing the report provided sufficient knowledge of the consultant and project exists to complete the report without an office visit. The report must be reviewed by the consultant and the consultant given an opportunity to comment in writing. The Division/District Administrator shall review and sign the report. The report and consultant's written comments shall be filed with ASD. ASD will sign the report and make final distributions of the copies. The consultant may appeal the evaluation to the rater's supervisor, Division/District Administrator or the Chief Engineer/Assistant Commissioner. If the report is revised, the Project Manager will make sure that any previously distributed copies of the original report are voided and that the correct information is in the database. Consultant Performance Reports shall be retained by ASD for three years after the date of the report. If requested by the prime consultant, the performance reports of their subconsultants on a project will be furnished to the prime consultant. This will provide feedback to the prime consultant on the subconsultant's performance. The Project Manager is responsible for ensuring the date of the last report is entered into FMS-II.

The information from the Consultant Performance Reports shall be input by ASD into a spreadsheet (Figure 8\_) for use by Selection Committees. Individual scores for each item rated will be in the spreadsheet, not just the average score. This will allow committee members to see if there are any individual category low scores while the average score is still high. Scoring data for each firm will be kept on a separate worksheet within the spreadsheet. Report data over three years old will be deleted from the database. If requested by a consultant in writing, a copy of the Performance Report spreadsheet will be provided to the consultants on a frequency of not more than twice a year.

If a contract is of such a nature that no useful purpose will be served by periodic reviews, the Division Administrator may exempt the specific contract from the review procedures stated above and substitute other procedures deemed appropriate to accomplish the intended purpose. The reasons for exemption and the substitute procedures used must be stated in writing and retained in the project file. This information will be furnished to Administrative Services Division.



The Project Manager is responsible for reviewing all plans, reports, etc. prepared by the consultant(s) for accuracy and completeness prior to submitting them for the designated activity. All internal coordination of the consultant plans, reports, etc. shall be arranged by the Project Manager. Once the plans, reports, etc. have been accepted, the appropriate division will be responsible for making in-house revisions or returning the plans, reports, etc. to the consultant for revisions.

#### 8.30 Final Consultant Performance Report

The Department requires that a final Consultant Performance Report, AS-415, be completed by the Project Manager from each division that works with the consultant within sixty calendar (60) days after the completion of the work from the prime, sub-consultant and DBE. Work will be considered complete after payment of the final voucher. This report is filed in the Administrative Services Division. If errors are found in the plans during construction, the procedure outlined in the MOA should be followed and an additional Consultant Performance Report should be completed and filed with ASD. The date the report is completed is entered on the FMS II system when the contract is deleted. The report must be reviewed with the consultant and the consultant given the opportunity to submit written comments regarding an unsatisfactory evaluation.

#### 8.40 Title VI Evaluation Report

Title VI Evaluation Reports (EEO-D2) must be updated annually by consultants with fifteen (15) or more employees, as long as the consultant or subconsultant(s) is performing in accordance with the Memorandum of Agreement. A copy is furnished to the Equal Opportunity Division for their review and approval. If a firm has less than fifteen (15) employees, a letter stating this must be furnished.

#### 8.50 Insurance

Certificates of Insurance evidencing that the insurance coverages required by the MOA are in effect must be submitted annually, from the date of execution of the MOA, by the consultants.

#### 8.60 Plan Errors and Omissions

The Department's policy is to take all reasonable steps to preclude significant design errors both by its own designers and by consultants. Immediate action upon discovery of an alleged design error is mandatory to minimize potential delay costs. This should include communication with the designer unless the solution is immediately obvious without this input. The consultant must be made aware of the circumstances and put on notice as soon as possible that there may be claim against them for errors/omissions. The consultant must be given an opportunity to help resolve problems that arise during construction as a result of unforeseen conditions or plan errors/omissions. The Department will recover costs incurred as a result of negligent design errors determined to be the liability of a consultant. If the error results in additional quantities being added

to the project that would have been required anyway, no compensation is sought from the consultant unless obtaining the additional quantities caused a delay in the project and there were other costs associated with the delay. Alleged design errors relating to this policy and known facts surrounding the alleged error will be carefully and fully reviewed by Department personnel and affected consultant as indicated herein. If necessary, a review committee shall establish the official position of the Department with respect to liability for additional costs incurred as a result of a particular alleged design error. All decisions shall be subject to appeal to the Chief Engineer at the option of the consultant.

At the first indication of a potential design error, the Project Manager shall take the following action; however, an error alleged by a contractor does not necessarily start this process.

- Immediately notify supervisor and consultant.
- Alert subordinates that more detailed documentation than that normally required on the work performed shall begin; include all decisions and descriptions of work, photographs, records of labor, materials, and equipment.
- Notify the consultant and offer the consultant an opportunity to participate in a solution.
- Attempt to resolve the issue. This attempt should proceed through channels to the Division Administrator as necessary.

Upon notification of an alleged error, the Division Administrator (or designee) shall:

- Review all available information, including costs, and determine the appropriateness of attempting to secure reimbursement from the consultant for the legally recoverable additional costs incurred as a result of the alleged error.
- Request assistance from the Attorney General's Office if legal interpretation is required.
- Drop further action if it would not be appropriate to pursue reimbursement from a cost viewpoint or it appears the error was not an act of negligence, in terms of the appropriate standard of care to the profession, or proceed to next step.
- If the decision is to proceed, schedule a meeting of a review committee.
- Lead the review committee in its deliberations to determine if the consultant was negligent, in terms of the appropriate standard of care to the profession, if reimbursement should be pursued, and amount of reimbursement.
- If the review committee determines the Consultant committed a negligent error and the consensus of the committee is to recommend reimbursement, notify the consultant and the Chief Engineer of the decision and outline the options for repayment or appeal.
- Take the following steps when applicable:
  - Negotiate a settlement.

- If the consultant agrees to reimburse the Department through deductions from other payments due, notify Fiscal Division to make appropriate deductions and release the consultant from further liability.
  - If the consultant repays in full, acknowledge receipt and tender release from further liability for the specific error.
  - If the consultant refuses repayment, does not appeal the decision, and has payments due from other agreements, notify Fiscal Division and advise him/her to withhold payments due the consultant.
  - If the consultant refuses repayment, does not appeal the decision, and has no other payments due, notify the Office of Attorney General to proceed with legal action.
  - If the consultant requests an appeal of the decision, notify the Chief Engineer that the consultant wishes to appeal the decision. Provide all pertinent details concerning the alleged error and actions and decisions to date.
- Notify the consultant of any actions taken.

#### 8.70 Ethics in Contracting

Sections 11-72 through 11-77 of the Virginia Public Procurement Act and Department of Personnel and Training Policy and Procedures Policy 1.60 discuss ethics in contracting.

Governmental business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Department-consultant relationships.

Accepting unsolicited advertising or promotional items such as calendars, pens, pencils, key rings, golf balls, coffee cups, etc. (Usually costing less than \$10) is acceptable since these would not reasonably tend to influence the discharge of an employee's duties and they are of nominal value. Employees may accept food, drinks and give-away items offered to all participants of consultant sponsored seminars or trade shows.

# CHAPTER 9

SUPPLEMENTAL  
AGREEMENTS



## CHAPTER 9 - SUPPLEMENTAL AGREEMENTS

The Memorandum of Agreement provides that supplemental agreements may be needed to amend the services that were agreed upon in the original contract. There are certain restrictions that apply to supplemental agreements. The additional work required must fall within the original scope and provides for services that are essentially the same as those in the original contract. Changes which are not appropriate to award through supplemental agreements are those which are outside the general scope of the contract. Such changes would have the effect of making the work performed substantially different from the work the parties bargained for at the time the original contract was awarded. A contract for road design work may not have a bridge added to it if there was not any bridge design work in the original RFP and MOA.

Supplemental agreements may increase or decrease the consultant's compensation and/or time and are used for:

- Increasing or decreasing the scope, character or complexity of the original services to be provided.
- Adjustment of the project schedule or time of completion.
- Correction of errors or omissions in the wording of the original contract.
- Additional phases of a Multiphase Professional Services Contract.

Supplemental agreements cannot be used to initiate a new Scope of Work outside the general intent of the original Memorandum of Agreement. In justifying the supplemental services, it is of particular importance that specific reasons are stated why the additional work is not contained in the original agreement; and, that a clear indication is given to show that circumstances would not require the consultant to anticipate the conditions warranting the change. Evidence to justify a supplemental agreement should, at a minimum, address the following: project continuity, time savings, cost effectiveness, and the learning curve for a new consultant. Proposals will be submitted, reviewed and approved for any supplemental agreement using the same process covered in Chapter 4, except that CTB approval is not required.

Frequently, changes must be made in the services covered by agreements for transportation projects. These changes may involve additions to, or reductions in the work, or changes in its character, duration, or complexity. Supplemental agreements will state the proposed changes of work, extension of time and completion, and adjustment of fees to be paid, if any.

Supplemental agreements to sole source and emergency contracts are to be awarded only when the circumstances surrounding the original procurement still exist and, therefore, warrant continued use of sole source or emergency services.

The consultant must receive authorization and a written notice to proceed before the required work is performed. If these changes require an adjustment of the prime

compensation provided in the prime consultant agreement, the authorization to perform the work must include the method to be used in determining the adjustment in the prime compensation and the amount of such adjustment. The Consultant's Estimate Voucher shall be modified to include any changes and the date of the supplemental agreement noted on the first page.

The consultant should have an executed supplemental agreement prior to proceeding with the work. However, because of project schedules, this is not always feasible. When not feasible, the consultant may be given authorization to proceed, with approval from the Chief Engineer, with the services up to the maximum compensation payable of the current contract. The consultant shall submit a proposal to perform the services. The proposal will be negotiated and an agreement reached. The consultant will be given a written notice to proceed with the understanding that a supplemental agreement will be executed as soon as possible. If there is any question as to whether or not the extra work is within the scope of the Memorandum of Agreement, the Attorney General's office shall be consulted.

The process for executing a supplement is the same as used in the original agreement, except that none require Commonwealth Transportation Board action. The Project Manager must secure approval from the Division Administrator to proceed with a supplemental agreement (Figure 9\_) and follow the Consultant Agreement Process Checklist, Supplemental Agreement (Appendix A). [3] The Federal Highway Administration's approval is required for projects with an estimated total cost of \$1,000,000,000 or more, or when the consultants are to act in a management role for the Department. It must be verified that funds are available to perform the additional services (Figure 5\_). The general procedure for negotiating the fee proposal is similar to the original MOA. Once the supplemental fee proposal has been negotiated, and manhours and fees have been agreed upon, the process for approval is the same as with the original MOA. The supplemental agreement will state the proposed changes of work or services, extension of time and completion, and adjustments of fees to be paid, if any. The supplemental agreement (Figure 9\_) is to be submitted to the Attorney General's Office and the Fiscal Division, for their approval. **Information Technology Division approval is also required if computer hardware and/or software acquisition or lease is indicated in the agreement.** After these approvals are obtained, the supplemental agreement is sent to the proper authority for their approval. Supplemental agreements must be signed by the same entity as the original agreements of which they are to become a part, either the Commissioner, Chief Engineer or Assistant Commissioner (Figure 9\_). Once approved, the supplement should be sent to anyone who received a copy of the original. The FMS II system should be updated to reflect the current dollar amounts as revised by the supplemental agreement and the funding division should be notified of the increase in cost (Figure 9\_).

Lump Sum contracts may not be increased by supplemental agreement by more than the greater of [1] \$50,000 or twenty-five percent of the original contract without advance written

approval of the Governor or his designee. This does not apply to cost-plus-net-fee contracts.

Supplemental agreements will not be processed to compensate the consultant for changes in overhead.

# CHAPTER 10

SMALL  
PURCHASE  
PROCEDURES  
FOR  
PROFESSIONAL  
SERVICES





## CHAPTER 10 - SMALL PURCHASE PROCEDURES FOR PROFESSIONAL SERVICES

Divisions requiring the use of professional services are authorized to procure such services in the following manner if the anticipated fee is expected to be \$30,000 or less. The Division Administrator will:

1. Develop a scope of work and proposed schedule for the project.
2. Select from a list of firms which have performed similar services over the previous two bienniums or which are available to perform a specialty service firms which appear to be most qualified to render the required services. Consideration should be given to the current amount of existing work with VDOT and to selecting a business to meet the Department's overall DBE goal.
3. Solicit interest from firms to determine their current personnel's qualifications, experience, workload, capacity, and ability to perform the scope of work and meet the proposed schedule. Written documentation of the interview must be made a part of the project file. It shall include the names and addresses of the firms contacted, the description of the required services, the names of the persons requesting and receiving the information, and the date the information was obtained.
  - Up to \$5,000 – Solicit interest verbally from a minimum of one source.
  - Over \$5,000 to \$15,000 – Solicit interest verbally or in writing from a minimum of three sources.
  - Over \$15,000 to \$30,000 – Solicit interest in writing from a minimum of four sources.
  - Advertising in the Virginia Business Opportunities (VB0) is optional up to \$30,000, but encouraged over \$15,000.
4. Rank the firms in the order deemed most qualified and include written documentation of the reasons for the ranking in the project file. Past performance on VDOT projects will be considered. Consideration should be given to the number and value of previous VDOT contracts awarded to each firm and the work should be spread around.
5. Negotiate a fee for the service with the first ranked firm. If negotiations fail to obtain a satisfactory agreement which is advantageous to the Department and at a fair and reasonable fee, negotiations shall be formally terminated and the second ranked firm shall be selected for negotiation. This procedure shall be continued until a contract can be negotiated at a fair and reasonable fee.
6. Prepare a Memorandum of Agreement using the latest guide agreement approved by the Attorney General's office. The agreement shall be on a lump sum or on a unit cost (hourly rate) basis and the overhead rates, average salary rates and fixed fee shall be within the range normally accepted by the Department and shall be

determined by the Division Administrator to be reasonable. No pre-award audit will be required.

7. The agreement shall be executed by the Division Administrator designated to execute an agreement of this nature.
8. A written notice (Figure 10-1) shall be issued identifying the consulting firm to be hired, the type of work to be performed, and the date the contract was or will be awarded. This notice shall be sent to Administrative Services Division with a request to post it in a public place for 10 workdays.
9. The remainder of the procurement process follows that of a regular contract beginning with Chapter 6.

# CHAPTER 11

SOLE  
SOURCE/  
EMERGENCY  
CONTRACTS



## CHAPTER 11 - SOLE SOURCE AND EMERGENCY CONTRACTS

### 11.10 General

Title 11, Chapter 7, Sections 11-41.D and .E of the Code of Virginia provide for sole source and emergency contracts. Written determination must be made of the need for a sole source or emergency contract and retained in the file. A written notice must be posted for at least ten (10) working days in a designated public area or published in a newspaper of general circulation on the day the contract is awarded or the decision to award is made. The notice must include the determination of need and identify that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Construction Division's Bulletin Board on the first floor at 1221 East Broad St., Richmond, VA. In addition, all sole source and emergency contracts shall be posted on the designated board in the Administrative Services Division located on the first floor at 1201 East Broad St., Richmond, VA. It will be necessary to furnish a copy of the notice to the ASD Procurement Manager for this posting.

A copy of the notice may be faxed to the district with a request that it be posted in a public area for at least ten (10) work days. Sole source or emergency procurements are improper if only for the administrative convenience of the Department.

### 11.20 Sole Source Contracts

Sole source contracts from \$5,001 to \$10,000 are approved by the Chief Engineer/Assistant Commissioner. Sole source contracts exceeding \$10,000 are approved by DGS/DPS (Figure 11-1). Submissions for approval are to address the following four points in the order given: explain why this is the only product or service that can meet the needs of the purchasing agency; explain why this vendor is the only practicably available source from which to obtain this service; explain why the price is considered reasonable; and describe the efforts that were made to conduct a non-competitive negotiation to get the best possible price for the taxpayer. When sole source contracts exceed \$10,000, forward the request to the Procurement Section of the Administrative Services Division (ASD) (Figure 11-2) who will seek the DGS/DPS approval for you. ASD will complete the Sole Source Procurement Approval Request form.

The Administrative Services Division maintains a central file of all VDOT sole source requests. Please insure that they are provided a copy of requests for \$10,000 or less.

Upon the division's receipt of approval to proceed (Figure 11-3), the public notice will be posted (Figure 11-4).

The remainder of the procurement process follows that of the small purchase procedure in Chapter 10 except there are no other firms to select for negotiations if negotiations fail with the sole source firm. The contract may be awarded lump sum or cost plus net fee. The contract will be reviewed by the Office of the Attorney General, and a Pre-Award Audit Evaluation shall be performed when the contract is greater than \$25,000. Modified

example letters to the Office of the Attorney General (Figure 11-5) and the Chief Engineer/Assistant Commissioner (Figure 11-6) are included.

### 11.30 Emergency Contracts

Divisions requiring the use of professional services for emergency contracts are authorized to procure such services in the following manner. Emergency contracts may be for any amount and are authorized and approved by the Chief Engineer. The “emergency” means a set of unforeseen circumstances beyond the control of the department that either presents a real, immediate threat to the proper performance of essential functions or may result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

The Division Administrator will:

1. Obtain approval in writing from the Chief Engineer to proceed on an emergency basis. Documented justification which must accompany each emergency request is to include an explanation of the following:
  - Explain the nature of the emergency and the relevant circumstances associated therewith.
  - Describe the threat to the health or safety of individuals, property, or essential state functions if immediate action is not taken. Provide an estimate of the potential material loss or damage.
  - Explain how the services of the consultant will alleviate or eliminate the emergency.
  - Describe what the consequences will be if the emergency action is not taken and the risks associated therewith.
2. Develop a scope of work and proposed schedule for the project.
3. Select a firm which has performed similar services over the previous two bienniums or which is available to perform a specialty service and which appears to be the most qualified to render the required services. The selected firm should have sufficient staff and expertise to rapidly perform the services. The procurement shall be made with such competition as is practicable under the circumstances.
4. Conduct a telephone or personal interview with a representative of the firm to determine their current personnel's qualifications, experience, workload, capacity, and ability to perform the scope of work and meet the proposed schedule. Written documentation of the interview must be made a part of the project file.
5. Negotiate a fee for the services. If negotiations fail to reach a satisfactory agreement which is advantageous to the Department and at a fair and reasonable fee, negotiations shall be formally terminated and another firm selected as indicated in

Steps 3 and 4. This procedure shall be continued until a contract can be negotiated at a fair and reasonable fee.

6. Prepare a Memorandum of Agreement using the latest standard agreement approved by the Attorney General's office. The agreement will usually be on a lump sum basis and the overhead rates, average salary rates and fixed fee shall be within the range normally accepted by the Department and shall be determined by the Division Administrator to be reasonable. Because of the necessity to rapidly proceed with emergency work, Pre-Award Audit Evaluations and Legal Reviews are not required.
7. The agreement shall be executed by the Chief Engineer. The agreement transmittal letter shall include a description of the contractor's qualifications, experience and background to provide the emergency service and the basis on which this consultant was selected over other qualified firms. Also include an explanation of how you concluded that the cost is fair and reasonable since competition was not conducted.

# CHAPTER 12

CONSULTANT  
ENGINEERING  
INSPECTION



## CHAPTER 12 – CONSULTANT ENGINEERING INSPECTION

### 12.10 General

VDOT utilizes consultant engineering firms to provide inspection services when the program objectives for roadway construction inspection cannot be provided by the Department. The need for consultant engineering inspection is generally determined at the District or Residency level by use of the Construction Manpower Management System, upcoming project data, and existing inspector manpower levels. The Construction Division, as requested through the Districts, provides inspector needs above existing levels through outsourcing.

Prior to the expression of interest return date established in the Request For Proposal the District and/or Residency may have an informational meeting to share information on work to be included in the contract and to address other issues of concern. These meetings have been well received by the consultant community. Attendance at these meetings is optional and notification to the consultant is provided through the Request for Proposal. These meeting should be held a minimum two weeks prior to the expression of interest return date.

The central office Construction Division chairs the Selection Committee, with the two remaining members being representatives from the District and/or Residency in which the construction project is located and who have knowledge of the project.

Upon completion of the interview process the selected firm will meet with the District and Residency personnel to better define the scope of work and identify issues of concern associated with the inspection services. This meeting should also define direct cost items such as numbers of cell phones, number of computers etc. and agreement should be reached on vehicle inspection mileage to be shown in the fee proposal. The consultant should also be advised that as general policy per diems for the inspection staff will not be paid by the Department. However, depending on the anticipated time frame of the consultant agreement, two to four weeks of per diem expenses may be included in the fee proposal and noted “for use only when authorized by VDOT”. The consultant should understand that these per-diems are for use only in the event that an increase in staff is required for a short duration. A short duration is defined as one to two weeks only. Both the Construction and Fiscal Divisions will review cost associated with direct cost items identified during the scoping meeting.

Two methods of payment are generally used for consultant engineering inspection contracts; (1) actual cost plus fixed fee payment, used for payment of project specific inspection contracts and (2) actual costs for each project assignment based on fixed billable rates, used for payment of district-wide and/or regional contracts.

### 12.20 Direct and Indirect Cost



The Department will allow the direct labor costs required for the field office operations as well as home or branch office direct labor costs, which are specifically identified and approved. The job classifications, man-hours, wage rates, etc., will be determined during contract negotiations. As a general rule, the home or branch office direct labor will be limited, to only those essential services which can be provided from the home or branch office more effectively and/or economically.

As a general rule, the Department will provide a field office and the necessary office equipment for the establishment of a field office and operations associated with it. Should the Department not own or have access to the required equipment items, the decision as to whether the items should be leased, purchased or allowed in some other manner as a direct cost or as an indirect cost will be made during contract negotiations, consistent with the Department's normal contracting practices. Payment for mobilization i.e. the consultant cost for implementation or providing and establishing inspection services is not allowable as a direct cost item.

The consultant should be responsible for providing office supplies to the field office such as pencils, paper etc. as well as, those items commonly used when providing construction inspection. These items will be further discussed under indirect cost.

The following is a list of some direct cost items normally associated with consultant inspection. The list is not all-inclusive, but provides the general types of cost which might be excepted and indicate the Department's policy on the allowance of such cost. It should also be noted that the Department has an option to furnish these items.

1. Survey equipment
2. Normal test equipment used for compaction testing of soil, asphalt and concrete etc., including cost associated with a nuclear gauge.
3. Specialized test and safety equipment unless one could reasonably expect it to be furnished, such as a respirator and paint test equipment on a task specific contract, such as a bridge painting inspection contract.
4. Computer, imaging and communication equipment only when it is requested by the district.
5. Inspection vehicles represented in the Fee Proposal should be two-wheel drive of the Ford Ranger or Chevy S-10 variety. In the event extended cab vehicles are leased payment for toolboxes will not be allowed. Payment for commuting miles will not be paid. Payment for leased vehicles and associated cost will only be approved in accordance with the following:
  - Invoiced least cost, which includes applicable tax, tags, registration fees, insurance, operating cost and maintenance as documented in the fee proposal. When this method of payment is used no allowance of \$0.15 per mile will be allowed.

(Example)

Leased cost	\$250.00
Tax, tags and registration fees	100.00
Insurance	125.00
Operating cost (Based on mileage approved by the District)	75.00
(Number of miles ÷ gal./mile x cost per gal)	
Maintenance	<u>50.00</u>
(Total invoice)	\$600.00

- Invoiced least cost, which includes applicable tax, tags, registration fees, invoiced cost for insurance, operating cost and maintenance as documented in the fee proposal. When this method of payment is used no allowance of \$0.15 per mile will be allowed. Payment for insurance operating cost and maintenance will be paid as invoiced.

(Example)

Least cost (Includes tax, tags and registration fees)	
(As invoiced)	\$350.00
Insurance (As invoiced)	115.00
Operating cost (Based on mileage approved by the District) (As invoiced)	65.00
(Number of miles ÷ gal./mile x cost per gal.) (As invoiced)	
Maintenance (As invoiced)	<u>45.00</u>
	\$575.00

- Invoiced least cost, which includes applicable tax, tags and registration fees and payment of \$0.15 per mile, providing payment for insurance, operating cost and maintenance based on inspection related mileage only. The Fee proposal must show and estimated number of inspection related miles as approved by the District.

(Example)

Leased cost (Includes tax, tags and registration fees (As Invoiced)	\$300.00
75 miles per day x \$0.15 x 21 (As Invoiced)	238.25
(Approved miles per day x \$0.15 x number of days per month)	

- Use of private vehicles for inspection related mileage only, will be paid for at the current VDOT reimbursement rate. Again based on mileage approved by the District

(Example)

35 miles per day x \$0.27 x 21	
(Approved miles per day x \$0.27 x number of days per month)	\$198.45

The following have been identified as indirect cost and therefore cost for these items should be included in the consultant's field overhead rate. A field office overhead rate of 75% will be used when an audited overhead has not been established.

1. "Tools of the Trade" or normal inspector equipment such as rules, manuals, safety vest and normal safety equipment i.e. steel toed shoes, hard hats, first aid kits, flares and fire extinguishers.
2. Field office supplies such as paper, pens, pencils, paper clips, etc.

# APPENDIX A

## CONSULTANT AGREEMENT CHECKLIST



CONSULTANT AGREEMENT PROCESS  
NEW AGREEMENT

Project: \_\_\_\_\_

\_\_\_\_\_ Project assigned.  
\_\_\_\_\_ Determine if other divisions are included.  
\_\_\_\_\_ Scoping meeting with other divisions (if applicable).  
\_\_\_\_\_ Prepare PE cost estimate and determine if PE funds are available.  
\_\_\_\_\_ If PE funds not available, review with Chief Engineer (CE).  
\_\_\_\_\_ Selection Committee appointed.  
\_\_\_\_\_ Rating criteria established to short list (RFP score sheet).  
\_\_\_\_\_ Letter to Division Administrator for approval to use consultant and appointment of selection committee, include rating criteria for short list.  
\_\_\_\_\_ Approval of Division Administrator to use consultant received and approval of rating criteria for short list.  
\_\_\_\_\_ [3] Approval of FHWA to use consultant on projects using federal funding with an estimated total cost of \$1,000,000,000 or more or when the consultants are to act in a management role for the Department.  
\_\_\_\_\_ Newspaper advertisement sent to Community & Public Relations Division.  
\_\_\_\_\_ Request for Proposal (RFP) prepared.  
\_\_\_\_\_ Department of Minority Business Enterprise Notified.  
\_\_\_\_\_ VBO notice (DGS-42-033 form) to DGS/DPS.  
\_\_\_\_\_ RFP posted on Internet.  
\_\_\_\_\_ Date public notice to be printed in newspaper.  
\_\_\_\_\_ Date public notice to be printed in VBO.  
\_\_\_\_\_ Newspaper and VBO notices and RFP sent to ASD.  
\_\_\_\_\_ Project information made available for consultant review.  
\_\_\_\_\_ Request for Proposal and rating criteria sent to consultants when requested.  
\_\_\_\_\_ Cutoff date for Expression of Interest (EOI) responses to RFP.  
\_\_\_\_\_ Consultant EOIs and signed ASD EOI sign-in sheet picked up from ASD.  
\_\_\_\_\_ EOIs reviewed to ensure all are for your project.  
\_\_\_\_\_ EOIs distributed to selection committee.  
\_\_\_\_\_ Conflict of Interest statements signed.  
\_\_\_\_\_ Coordinate short list meeting date with ASD.  
\_\_\_\_\_ Consultants short listed (ASD must be present at meeting).  
\_\_\_\_\_ Short listed firms workload verified.

Short listed firms performance reports reviewed/  
reference checks made.

Short list with scores of all firms evaluated and  
rating forms for the short listed firms certified  
by ASD.

Notice of consultants selected for short list  
posted to Internet.

Copy of Firm Data Sheet from each EOI furnished to  
Chairman, Consultant Coordinating Committee.

Coordinate presentation meeting date with ASD.

Notice to consultants selected for short list to  
make technical presentations.

Meeting to give short listed consultants the  
detailed scope of work.

Prepare questions for presentations (if  
applicable).

Consultants make presentations (ASD requested to  
be present, but does not have to be present).

Consultants evaluated, selection made, and  
narrative prepared.

Final selection certified.

Selection to Division Administrator for approval  
with narratives and rating forms for all firms  
interviewed.

Approval of selection from Division Administrator

Short listed firms notified of the results by  
telephone.

Notice of final selection posted to Internet.

Written notice sent to consultants not selected.

Invitation to consultant selected for proposal  
(Insurance Certificate requested, Title VI  
requested and forms furnished).

Advance notice to External & Construction Audit  
(E&CA) Division of pending Pre-Award Audit.

Meeting with consultant to discuss scope of the  
work.

Sample fee proposal data sheets provided to  
consultant.

E&CA Division Checklist provided to Consultant.

Review and refine PE cost estimate.

Proposal received.

Title VI Form received (if not currently on file).

Title VI to EO Div. Admin.

EO comment/approval received.

EO corrective action requirements to consultant.

EO corrective action plan received.

EO corrective action plan evaluated and verified.

Proposal analyzed by all involved divisions.

Notify ASD of time and place for negotiations.

Proposal negotiated.

Revised proposal received and analyzed.

Revised proposal negotiated.

Audit request to E&CA Division with copy of final  
proposal.

\_\_\_\_\_ Audit letter received.  
\_\_\_\_\_ Adjust fee proposal to include audit comments.  
\_\_\_\_\_ [3] [4] Consult with and submit to FHWA final  
Scope of Work on federally funded NHS oversight  
projects, federal projects with an estimated total  
cost of \$1,000,000,000 or more, or when the  
consultants are to act in a management role for  
the Department on federal projects.  
\_\_\_\_\_ Determine if consultant wants to have an Escrow  
Agreement.  
\_\_\_\_\_ If consultant does not want an Escrow Agreement,  
execute Escrow Agreement Waiver and delete Escrow  
section from MOA.  
\_\_\_\_\_ Insurance Certificate received.  
\_\_\_\_\_ Out-of-state corporation submits registration as  
professional corp in Virginia and Certificate of  
Authority.  
\_\_\_\_\_ Prepare Memorandum of Agreement (MOA) (Have draft  
reviewed by Asst. Div. Admin. prior to typing).  
\_\_\_\_\_ Draft MOA reviewed by other involved divisions.  
\_\_\_\_\_ Draft MOA to consultant for review and comment.  
\_\_\_\_\_ Draft MOA concurrence received from consultant.  
\_\_\_\_\_ Prepare resolution if fee => \$300,000.  
\_\_\_\_\_ 1 MOA and resolution to Legal for review.  
\_\_\_\_\_ MOA and resolution comments returned by Legal.  
\_\_\_\_\_ 2 MOAs to ITD for review (if computer equipment  
and/or software in fee proposal).  
\_\_\_\_\_ MOAs returned by ITD.  
\_\_\_\_\_ 2 MOAs to E&CA Division for review.  
\_\_\_\_\_ MOAs returned by E&CA Division.  
\_\_\_\_\_ Send 2 MOAs to consultant for concurrence and  
execution.  
\_\_\_\_\_ Executed MOA s returned by consultant.  
\_\_\_\_\_ Letter to CE for MOA execution - 2 MOAs with final  
fee proposal, Fact Sheet & Location Map if fee =  
>\$300,000 (Fee <\$150,000 - Chief Engineer,  
\$150,000< = fee <\$300,000 - Commissioner, fee = >  
\$300,000 - Board).  
\_\_\_\_\_ If project in Suffolk District, send District  
Administrator copy of Resolution, Fact Sheet, and  
Location Map.  
\_\_\_\_\_ Notify Programming & Scheduling Div. Admin.  
whether or not fee exceeds established preliminary  
engineering cost. If secondary, notify District  
Engineer. If urban, notify Urban Div. Admin.  
\_\_\_\_\_ Commonwealth Transportation Board (CTB) meeting  
(Documentation to CE 17 calendar days prior to  
Board meeting).  
\_\_\_\_\_ Electronic file for Resolution, Fact Sheet and  
Location Map emailed to Commissioner s Executive  
Secretary.  
\_\_\_\_\_ Brief Division Administrator prior to CTB meeting.  
\_\_\_\_\_ Executed MOA s returned (Resolution) (Check for  
signatures and dates on all copies).

\_\_\_\_\_ Executed MOA to consultant with notice to proceed  
 (original).  
 \_\_\_\_\_ Specifications, Special Provisions, Office  
 Practice and Standards to consultant.  
 \_\_\_\_\_ Consultant added to mailing list.  
 \_\_\_\_\_ Executed MOA to Central File (original).  
 \_\_\_\_\_ Executed MOA to Bridge File (copy).  
 \_\_\_\_\_ Prepare Consultant s Estimate Voucher.  
 \_\_\_\_\_ MOA to E&CA Division with letter of  
 acceptance/notice to proceed to consultant,  
 resolution.  
 \_\_\_\_\_ 1 MOA to FHWA on federally funded NHS [4]  
 oversight projects, [3] federal projects with an  
 estimated total cost of \$1,000,000,000 or more, or  
 when the consultants are to act in a management  
 role for the Department on federal projects.  
 \_\_\_\_\_ Voucher supply sent to consultant.  
 \_\_\_\_\_ Furnish agreement data file to Asst. Div. Admin.  
 \_\_\_\_\_ Escrow Agreement sent to consultant (3 copies) (if  
 requested by consultant) (Construction Div. Form  
 C-8).  
 \_\_\_\_\_ Escrow Agreement received from consultant.  
 \_\_\_\_\_ Escrow Agreement to CE for execution (3 copies).  
 \_\_\_\_\_ Executed Escrow Agreement to E&CA Division (1  
 original copy).  
 \_\_\_\_\_ Executed Escrow Agreement to consultant (1  
 original copy).  
 \_\_\_\_\_ Contract entered on FMS II.  
 \_\_\_\_\_ District advised regarding review of shop  
 drawings.

Note: Board meets third Thursday of each month.

Some correspondence may be combined into one letter.

[4] Final Scopes of Work and MOA s are required to be sent to the FHWA only for federally funded NHS oversight projects, [3] federal projects with an estimated total cost of \$1,000,000,000 or more, or when the consultants are to act in a management role for the Department on federal projects. (Do not send proposals)

Escrow Agreements must be furnished to Fiscal Division prior to submitting any vouchers to them.



CONSULTANT AGREEMENT PROCESS  
SUPPLEMENTAL AGREEMENT

Project: \_\_\_\_\_

Note: Supplements are not approved by the CTB.

\_\_\_\_\_ Letter to Division Administrator (DA) for authorization to proceed with a Supplemental Agreement.

\_\_\_\_\_ Approval of the FHWA for Supplemental Agreement on projects using federal funding with an estimated total cost of \$1,000,000,000 or more, or when the consultants are to act in a management role for the Department.

\_\_\_\_\_ Prepare PE cost estimate and determine if PE funds are available.

\_\_\_\_\_ If PE funds not available, review with Chief Engineer.

\_\_\_\_\_ Invitation to consultant for proposal.

\_\_\_\_\_ Meeting with consultant to discuss scope of work.

\_\_\_\_\_ External & Construction Audit (E&CA) Division Checklist provided to consultant if most recent audit is more than one year old.

\_\_\_\_\_ Proposal received.

\_\_\_\_\_ Proposal analyzed by all divisions involved.

\_\_\_\_\_ Proposal negotiated.

\_\_\_\_\_ Revised proposal received and analyzed.

\_\_\_\_\_ Revised proposal negotiated.

\_\_\_\_\_ Audit request to E&CA Division with copy of final Proposal.

\_\_\_\_\_ Audit letter received.

\_\_\_\_\_ Adjust fee proposal to include audit comments.

\_\_\_\_\_ [3] Final Scope of Work to FHWA on federally funded NHS [4] oversight projects, projects with an estimated total cost of \$1,000,000,000 or more, or when the consultants are to act in a management role for the Department.

\_\_\_\_\_ Prepare Supplement to Memorandum of Agreement (SMOA) (Supplement to be signed by same person as original Agreement) (Have draft reviewed by Asst. Div. Admin. prior to typing).

\_\_\_\_\_ Draft SMOA reviewed by other divisions involved.

\_\_\_\_\_ Draft SMOA to consultant for review and comment.

\_\_\_\_\_ Draft SMOA concurrence received from consultant.

\_\_\_\_\_ 1 SMOA to Legal for review.

\_\_\_\_\_ SMOA returned by Legal.

\_\_\_\_\_ 2 SMOAs to ITD for review (if computer equipment and/or software is involved in fee proposal).

\_\_\_\_\_ SMOAs returned by ITD.

\_\_\_\_\_ 2 SMOAs to E&CA Division for review.

\_\_\_\_\_ SMOAs returned by E&CA Division.

\_\_\_\_\_ Send 2 MOA to consultant for concurrence and execution.

\_\_\_\_\_ Executed MOA s returned by consultant.

Letter to CE for MOA execution - 2 SMOA with final fee proposal, Location Map, Fact Sheet,  
Letter to Programming & Scheduling Div. Admin. informing whether or not fee exceeds established preliminary engineering cost. If secondary, use letter to District Engineer instead. If Urban, notify Urban Div. Admin.  
Executed SMOAs returned.  
Executed SMOA to consultant with notice to proceed (original).  
Executed SMOA to Central File (original).  
Executed SMOA to Bridge File (copy).  
Prepare Revised Consultant s Estimate Voucher.  
SMOA to E&CA Division with letter of acceptance/notice to proceed.  
1 SMOA to FHWA on federally funded NHS [4] oversight projects, [3] projects with an estimated total cost of \$1,000,000,000 or more, or when the consultants are to act in a management role for the Department.  
Voucher supply sent to consultant.  
Supplement entered on FMS II.

Note: Final Scopes of Work and SMOAs are required to be sent to the FHWA only for federally funded NHS [4] oversight projects, [3] projects with an estimated total cost of \$1,000,000,000 or more, or when the consultants are to act in a management role for the Department.  
(Do not send proposals)

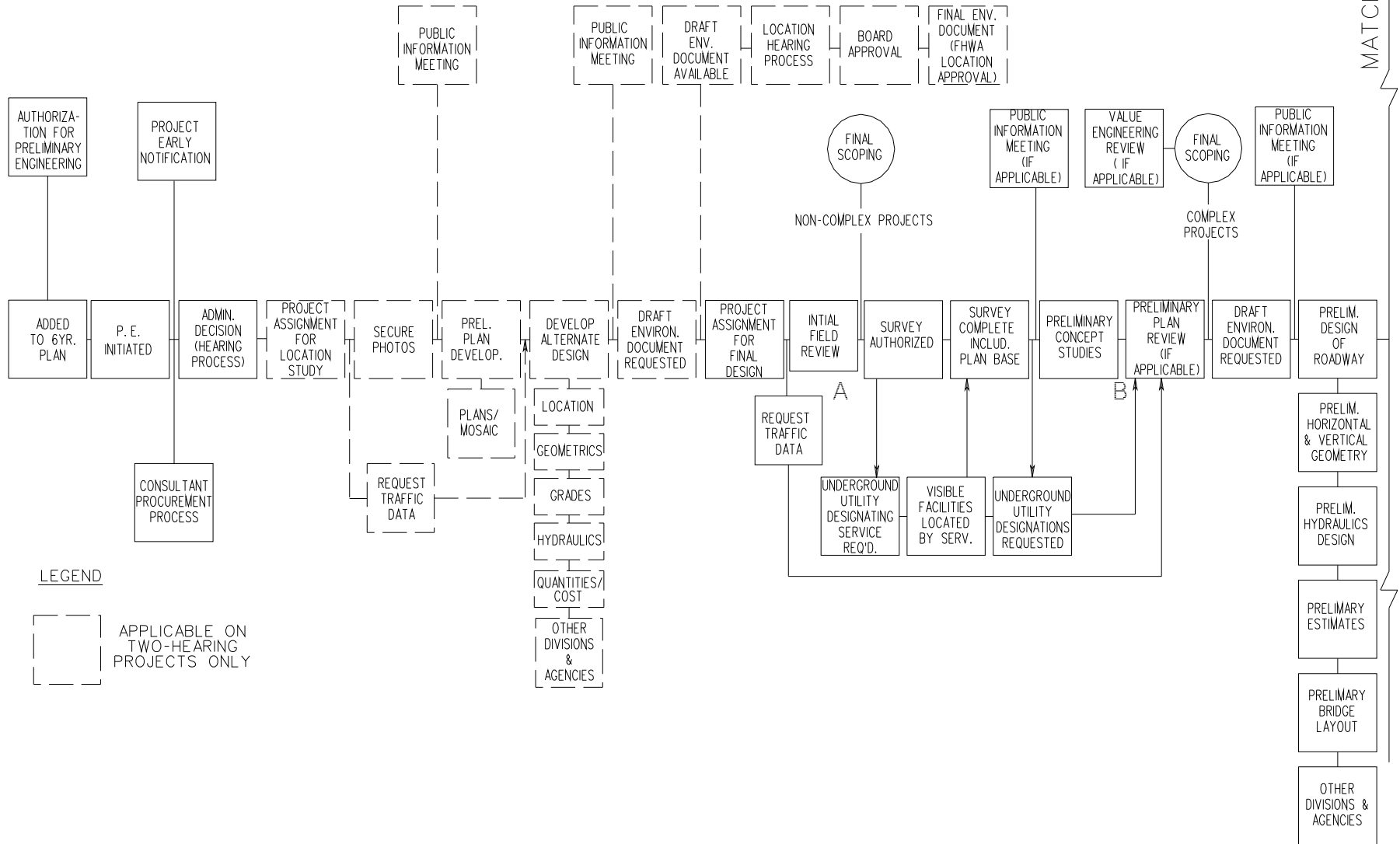
# APPENDIX B

FLOW  
CHARTS



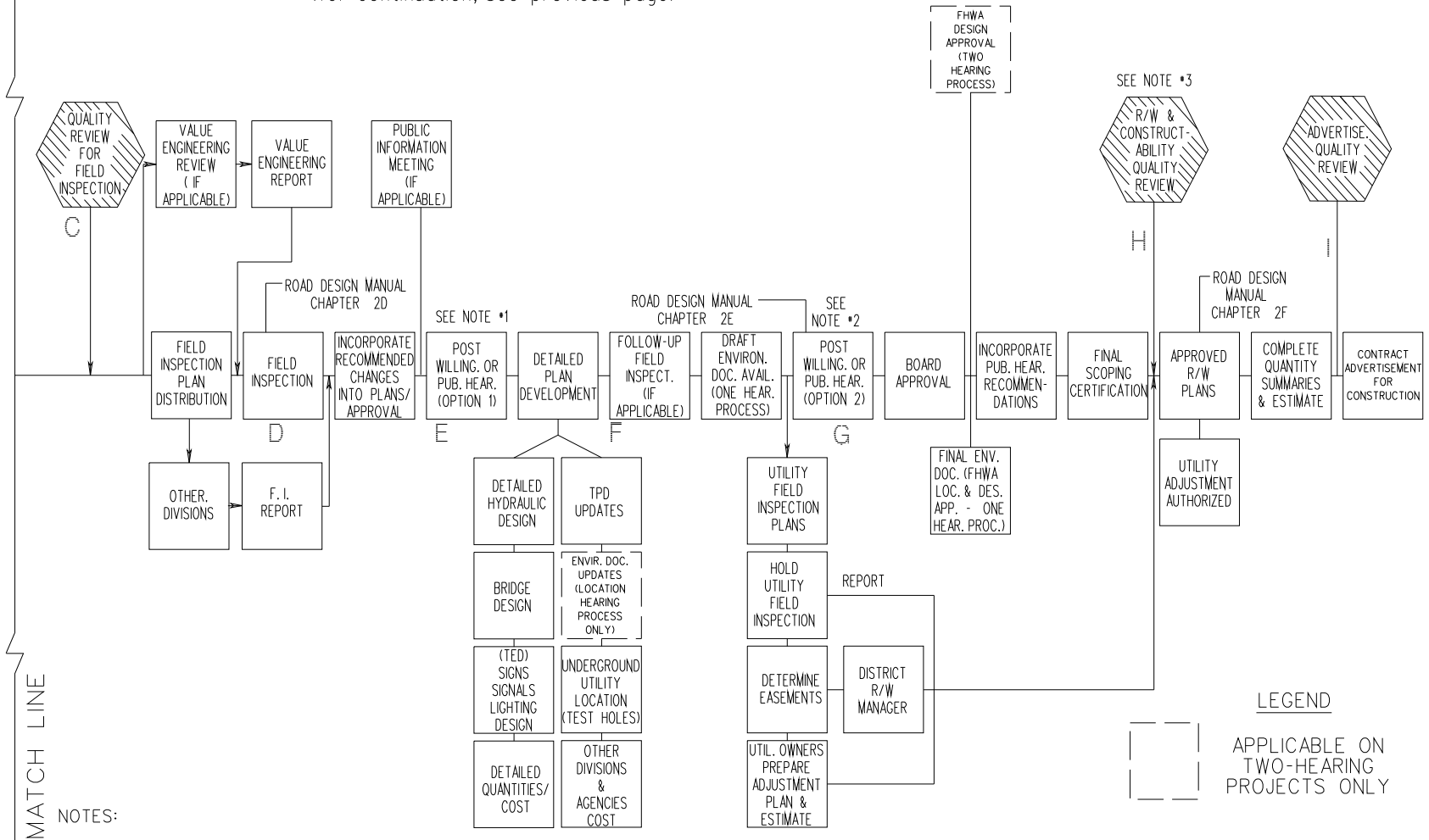
# PROJECT DEVELOPMENT FLOW CHART

(for continuation, see next page)



## PROJECT DEVELOPMENT FLOW CHART

(for continuation, see previous page)



1. POST WILLINGNESS OR PUBLIC HEARING MAY BE CONDUCTED AT THIS STAGE ON PROJECTS WITH NO FEDERAL AID AND OTHER PROJECTS WITH NO ENVIRONMENTAL DOCUMENT.
2. POST WILLINGNESS OR PUBLIC HEARING IS TO BE HELD AT THIS STAGE IF NOT CONDUCTED AT AN EARLIER STAGE.
3. THIS REVIEW CAN BE MADE AT ANYTIME THAT THE PLANS ARE DEVELOPED TO THE POINT OF CONSTRUCTABILITY.

LEGEND

APPLICABLE ON  
TWO-HEARING  
PROJECTS ONLY

QUALITY REVIEW CHECK  
A CHECK LIST IS PROVIDED IN  
ROAD DESIGN MANUAL,  
CHAPTER 1E

- A** Initial Field Review - This review is held before any survey or final design is initiated on a project. The purpose is to establish project intent, scope and criteria before any significant engineering expenditures. Information developed at this meeting is used to establish the limits of survey information to be obtained for the project and to document on Form LD-430 the Final Scope Approval for non-complex projects not requiring a Preliminary Plan Review. The Project Manager will decide whether the project complexity requires a Preliminary Plan Review to establish the Final Scope of Project.
- B** Preliminary Plan Review - This is an optional field review that may be appropriate for complex Interstate, Primary, Secondary or Urban projects where the Project Manager feels it is necessary to obtain consensus from the District, municipalities, other agencies, etc., on the Final Scope of the project after survey is obtained and preliminary concept studies have been conducted. The results of this meeting are documented on Form LD-430 (Part C).
- C** Quality Review for Field Inspection - The Project Manager initiates this quality review when the plans depict sufficient design detail to hold a Field Inspection as described in the following section. A Quality Control Checklist is available to assist in this quality review. Design details should include items listed under FI on the Quality Control Checklist.
- D** Field Inspection - The Project Manager initiates a field inspection when the plans depict sufficient design detail to allow an effective review by all involved disciplines. All disciplines will review the project on site, not necessarily at the same time.
- E** Post Willingness or Public Hearing (Design or Combined L&D)  
(OPTION 1):
- After all Field Inspection and Value Engineering recommendations have been incorporated into the plans, the Project Manager (after consulting with District Administration) will decide if the project is ready for a Public Hearing. For non-Federal Aid projects that do not require an Environmental Document, the Project Manager can elect to go to Public Hearing when major R/W requirements have been established.
- F** Follow-Up Field Inspection - Selected projects, due to their nature or complexity, should have another Field inspection after the plan design has advanced to a greater degree of completion. The Project Manager will decide if the follow-up Field Inspection is necessary.
- G** Post Willingness or Public Hearing (Design or Combined L&D)  
(OPTION 2):
- For Federal Aid and other projects requiring an Environmental Document, an opportunity for public comment will be provided at a Public Hearing (or posting of a willingness notice) after proposed R/W requirements have been established (including those for final drainage design). The Approved Draft Environmental Document shall be available 15 days prior to the public hearing. The Project Manager will determine when the plans are ready for the public hearing.
- H** R/W and Constructability Quality Review - The Project Manager will determine when the project plans should undergo a detailed quality review for R/W acquisition and for constructability. Constructability relates to whether the project can be constructed with the information shown in the plans. This will provide the design team with the flexibility to request the review when the plans are ready and will provide the benefit of scheduling the review in time to address issues that may arise in the review. A Quality Control Checklist is available to assist in this quality review.
- I** Advertisement Quality Review - This Quality Review of the completed construction plans is conducted 45 days prior to the First Submission to the Construction Division. The plans at this stage should be essentially complete with all Quantity Summaries and plans from other Divisions such as TED, Structure & Bridge, Environmental Quality and utility plans from R/W. A Quality Control Checklist is available to assist in this quality review.

# APPENDIX C

FEDERAL  
AID  
POLICY  
GUIDE-  
PART 172



[3] List of Subjects in 23 CFR Part 172

Government procurement, Grant programs-transportation, Highways and roads.

Issued on: June 5, 2002  
Mary E. Peters  
Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA revises part 172 of title 23, Code of Federal Regulations, to read as set forth below:

PART 172 ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICE CONTRACTS

Sec.

Purpose and applicability. 172.1

Definitions. 172.3

Methods of procurement. 172.5

Audits. 172.7

Approvals. 172.9

Authority: 23 U.S.C. 112, 114(a), 302, 315, and 402; 40 U.S.C.

541 et seq.; sec.1205(a), Pub. L. 105 178, 112 Stat. 107 (1998); sec. 307, Pub. L. 104 59, 109 Stat. 568 (1995); sec. 1060, Pub. L. 102 240, 105 Stat. 1914, 2003 (1991); 48 CFR 12 and 31; 49 CFR 1.48(b) and 18.

§172.1 Purpose and applicability.

This part prescribes policies and procedures for the administration of engineering and design related service contracts under 23 U.S.C. 112 as supplemented by the common grant rule, 49 CFR part 18. It is not the intent of this part to release the grantee from the requirements of the common grant rule. The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost. Recipients of Federal funds shall ensure that their subrecipients comply with this part.



### §172.3 Definitions.

As used in this part:

Audit means a review to test the contractor's compliance with the requirements of the cost principles contained in 48 CFR part 31.

Cognizant agency means any Federal or State agency that has conducted and issued an audit report of the consultant's indirect cost rate that has been developed in accordance with the requirements of the cost principles contained in 48 CFR part 31.

Competitive negotiation means any form of negotiation that utilizes the following:

(1) Qualifications-based procedures complying with title IX of the Federal Property and Administrative Services Act of 1949 (Public Law 92 582, 86 Stat. 1278 (1972));

(2) Equivalent State qualifications-based procedures; or

(3) A formal procedure permitted by State statute that was enacted into State law prior to the enactment of Public Law 105 178 (TEA 21) on June 9, 1998.

Consultant means the individual or firm providing engineering and design related services as a party to the contract.

Contracting agencies means State Departments of Transportation (State DOTs) or local governmental agencies that are responsible for the procurement of engineering and design related services.

Engineering and design related services means program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a construction project subject to 23 U.S.C. 112(a).

One-year applicable accounting period means the annual accounting period for which financial statements are regularly prepared for the consultant.

### §172.5 Methods of procurement.

(a) Procurement. The procurement of Federal-aid highway contracts for engineering and design related services shall be evaluated and ranked by the contracting agency using one of the following procedures:

(1) Competitive negotiation. Contracting agencies shall use competitive negotiation for the procurement of engineering and design related services when Federal-aid highway funds are involved in the contract. These contracts shall use qualifications-based selection procedures in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 544) or equivalent State qualifications-based requirements. The proposal solicitation (project, task, or service) process shall be by public announcement, advertisement, or any other method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract. Price

shall not be used as a factor in the analysis and selection phase. Alternatively, a formal procedure adopted by State Statute enacted into law prior to June 9, 1998 is also permitted under paragraph (a)(4) of this section.

(2) Small purchases. Small purchase procedures are those relatively simple and informal procurement methods where an adequate number of qualified sources are reviewed and the total contract costs do not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11). Contract requirements should not be broken down into smaller components merely to permit the use of small purchase requirements. States and subrecipients of States may use the State's small purchase procedures for the procurement of engineering and design related services provided the total contract costs do not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11).

(3) Noncompetitive negotiation. Noncompetitive negotiation may be used to procure engineering and design related services on Federal-aid participating contracts when it is not feasible to award the contract using competitive negotiation, equivalent State qualifications-based procedures, or small purchase procedures. Contracting agencies shall submit justification and receive approval from the FHWA before using this form of contracting. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- (i) The service is available only from a single source;
- (ii) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or
- (iii) After solicitation of a number of sources, competition is determined to be inadequate.

(4) State statutory procedures. Contracting agencies may procure engineering and design related services using an alternate selection procedure established in State statute enacted into law before June 9, 1998.

(b) Disadvantaged Business Enterprise (DBE) program. The contracting agency shall give consideration to DBE consultants in the procurement of engineering and design related service contracts subject to 23 U.S.C. 112(b)(2) in accordance with 49 CFR part 26.

(c) Compensation. The cost plus a percentage of cost and percentage of construction cost methods of compensation shall not be used.

#### §172.7 Audits.

(a) Performance of audits. When State procedures call for audits of contracts or subcontracts for engineering design services, the audit shall be performed to test compliance with the requirements of the cost principles contained in 48 CFR part 31. Other procedures may be used if permitted by State statutes that were enacted into law prior to June 9, 1998.

(b) Audits for indirect cost rate. Contracting agencies shall use the indirect cost rate established by a cognizant agency audit for the cost principles contained in 48 CFR part 31 for the

consultant, if such rates are not under dispute. A lower indirect cost rate may be used if submitted by the consultant firm, however the consultant's offer of a lower indirect cost rate shall not be a condition of contract award. The contracting agencies shall apply these indirect cost rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and the indirect cost rates shall not be limited by any administrative or de facto ceilings. The consultant's indirect cost rates for its one-year applicable accounting period shall be applied to the contract, however once an indirect cost rate is established for a contract it may be extended beyond the one year applicable accounting period provided all concerned parties agree. Agreement to the extension of the one-year applicable period shall not be a condition of contract award. Other procedures may be used if permitted by State statutes that were enacted into law prior to June 9, 1998.

(c) Disputed audits. If the indirect cost rate(s) as established by the cognizant audit in paragraph (b) of this section are in dispute, the parties of any proposed new contract must negotiate a provisional indirect cost rate or perform an independent audit to establish a rate for the specific contract. Only the consultant and the parties involved in performing the indirect cost audit may dispute the established indirect cost rate. If an error is discovered in the established indirect cost rate, the rate may be disputed by any prospective user.

(d) Prenotification; confidentiality of data. The FHWA and recipients and subrecipients of Federal-aid highway funds may share the audit information in complying with the State or subrecipient's acceptance of a consultant's overhead rates pursuant to 23 U.S.C. 112 and this part provided that the consultant is given notice of each use and transfer. Audit information shall not be provided to other consultants or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the State or subrecipient's acceptance of a consultant's overhead rates pursuant to 23 U.S.C. 112 and this part without the written permission of the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance, however should a release be required by law or court order, such release shall make note of the confidential nature of the data.

#### §172.9 Approvals.

(a) Written procedures. The contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These written procedures and all revisions shall be approved by the FHWA for recipients of federal funds. Recipients shall approve the written procedures and all revisions for their subrecipients. These procedures shall, as appropriate to the particular method of procurement, cover the following steps:

(1) In preparing a scope of work, evaluation factors and cost estimate for selecting a consultant;

- (2) In soliciting proposals from prospective consultants;
  - (3) In the evaluation of proposals and the ranking/selection of a consultant;
  - (4) In negotiation of the reimbursement to be paid to the selected consultant;
  - (5) In monitoring the consultant's work and in preparing a consultant's performance evaluation when completed; and
  - (6) In determining the extent to which the consultant, who is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors or deficiencies in design furnished under its contract.
- (b) Contracts. Contracts and contract settlements involving design services for projects that have not been delegated to the State under 23 U.S.C. 106(c), that do not fall under the small purchase procedures in §172.5(a)(2), shall be subject to the prior approval by FHWA, unless an alternate approval procedure has been approved by FHWA.
- (c) Major projects. Any contract, revision of a contract or settlement of a contract for design services for a project that is expected to fall under 23 U.S.C. 106(h) shall be submitted to the FHWA for approval.
- (d) Consultant services in management roles. When Federal-aid highway funds participate in the contract, the contracting agency shall receive approval from the FHWA before hiring a consultant to act in a management role for the contracting agency.

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# APPENDIX D

DBE  
POLICY



## DBE PROCEDURES FOR CONSULTANT PROCUREMENT

### 1. Request for Proposal (RFP) Requirements Matrix:

Preliminary Engineering Funding Source	STATE FUNDED PE	FEDERAL FUNDED PE RACE NEUTRAL	FEDERAL FUNDED PE RACE CONSCIOUS
Procurement Procedure	Same on all state funded projects.	Start as race neutral and switch to race conscious if goal not being met. Each division will track DBE utilization separately and make own decision as to whether to use race neutral or race conscious goals. The number of contracts to be advertised may be considered when deciding which method to use.	
Short List Scoresheet	Use RFP Consultant Short List Score Sheet – State Funded Projects.	Use RFP Consultant Short List Score Sheet – Federally Funded Projects.	Use RFP Consultant Short List Score Sheet – Federally Funded Projects with DBE goal.
DBE Goal	10% mandatory goal.	Race neutral goal. (10%)	Race conscious goal. (10%)
DBE Workload	Count full DBE workload.	Subtract \$500,000 from each DBE's workload and add remainder (>\$0) to the prime's workload.	
Good Faith Efforts	Not accepted.	Not applicable	Accepted
Prompt Payment of Retainage to Subconsultants	MOA requires prompt payment of retainage and indicates that retainage is not required on subs.		
Encourage Use of DBEs	RFP wording encourages use of DBEs on all contracts.		
Consultant Performance Reports	Consultants failing to utilize DBE subconsultants for the amount of work established in the fee proposal, shall receive a low score in Section III.1. Low scores in this area shall be considered on future consultant selections.		
Consultant Data included in EOI. (A count of all firms participating or attempting to participate on contracts)	Data will be collected on a Firm Data Sheet on all firms, both primes and subs, submitting EOIs. Firm name, location, DBE status, age, and annual gross receipts will be included in the Firm Data Sheet. A copy of the sheets from all advertisements will be sent to the Chairperson, Consultant Coordinating Committee.		
Additional DBE Data Required to be in EOI. Requested in RFP.	<ul style="list-style-type: none"> <li>Names and addresses of DBE firms that will participate in the contract.</li> <li>Description of the work that each DBE will perform.</li> <li>Percentage amount of the participation of each DBE firm.</li> <li>Written documentation of the prime's commitment to use DBEs.</li> <li>Written confirmation from the DBE that it is participating.</li> <li>Firm's age and annual gross receipts.</li> </ul>	<ul style="list-style-type: none"> <li>Names and addresses of DBE firms that will participate in the contract.</li> <li>Description of the work that each DBE will perform.</li> <li>Percentage amount of the participation of each DBE firm. [1]</li> <li>Firm's age and annual gross receipts.</li> </ul>	<ul style="list-style-type: none"> <li>Names and addresses of DBE firms that will participate in the contract.</li> <li>Description of the work that each DBE will perform.</li> <li>Percentage amount of the participation of each DBE firm.</li> <li>Written documentation of the prime's commitment to use DBEs.</li> <li>Written confirmation from the DBE that it is participating.</li> <li>If the contract goal is not met, evidence of good faith effort.</li> <li>Firm's age and annual gross receipts.</li> </ul>

## 2. DBE Goals on Federally Funded Projects

The following information has been extracted from 49 CFR Part 26 which replaces 49 CFR Part 23. Text in parenthesis ( ) are comments not contained in the regulation.

- Contract goals are not required on every contract. Goals may only be needed on certain contracts if the overall goal cannot be met through race-neutral measures, like outreach and technical assistance. Race-conscious measures, like contract goals, should only be used to make up the difference.
- The regulation explicitly provides that recipients (VDOT) will not be penalized or sanctioned for failing to meet their DBE goals.
- Recipients (VDOT) must set overall goals to represent a “level playing field” - the amount of DBE participation they could realistically expect in the absence of discrimination. This goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs to participate. Goals are set based on local market conditions. There is no federally mandated 10% goal. If a goal is used, it may be set at any level believed appropriate for the type and location of the specific work involved. (The current overall VDOT DBE goal has been determined to be 10.1%. For consultant procurement, the overall goal will be 10%. Each individual Division Administrator is responsible for monitoring and obtaining this goal for their division.)
- When a firm is certified, it normally stays certified for three years, but must inform the recipient (VDOT) in writing of any changes that would affect its eligibility and must submit an annual affidavit that such changes have not taken place. Firms leave the program if they grow too large. Individuals leave the program if they become too wealthy.
- Any individual owning a business may demonstrate that he/she is socially and economically disadvantaged, even if that individual is not a woman or minority.
- Recipients (VDOT) must develop and maintain a “bidders” list to be a count of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must contain all firms, both DBE and non-DBE, primes and subs. The list must contain the age of each firm and annual gross receipts of the firm. (A Firm Data Sheet has been added to the RFP. VDOT will collect data on all contracts.. Each project manager that advertises a project shall submit a copy of these forms to Chairperson, Consultant Coordinating Committee, who will compile this data.)
- Contracts (MOAs) must contain language for prompt payment by primes to subcontractors. The language must also address payment of retainage within a certain number of days after the work has been satisfactorily completed.
- Recipients (VDOTs) should get maximum feasible DBE participation through race-neutral means and only uses race-conscious measures (goals) to get the remainder of the DBE participation it needs to meet the overall goal. The overall goal can possibly be met without setting any contract goals.
- When a recipient (VDOT) sets a contract goal, the basic obligation of bidders is to make good faith efforts to meet it. First, they can meet the goal, by documenting that they have obtained commitments for enough DBE participation to meet the goal. Second, even though they have not met the goal, they can document that they have made good faith effort to do so. Recipients are not to use a “conclusive presumption” approach, in which the apparent successful bidder is summarily found to have failed to make good faith efforts simply because another bidder was able to meet the goal. Recipients (VDOT) are prohibited from denying a contract to a bidder simply because it did not obtain enough DBE participation to meet the goal. (See Good Faith Effort instructions in RFP.)

- When recipients (VDOT) set a contract goal, DBE prime contractors are required to meet goals and make good faith efforts on the same basis as other prime contractors. DBEs work performed with their own forces, as well as the work that they commit to be performed by DBE subcontractors, will count toward the goal.
- When recipients (VDOT) set a contract goal, prime contractors are required to replace a fallen-away DBE (or to demonstrate that it has made good faith efforts toward that end) only to the extent needed to ensure that the prime contractor is able to achieve the contract goal established by the recipient for the procurement. A prime contractor may not terminate a DBE firm for convenience and then perform the work with its own forces without the recipient's written consent. The prime cannot bump DBE off project and do work itself.
- When a DBE prime contractor or subcontractor subcontracts work to another firm, the work counts toward DBE goals only if the other firm is itself a DBE.
- The value of work performed by DBEs themselves is deemed to include the cost of materials and supplies purchased, and equipment leased, by the DBE from non-DBE sources.
- DBEs must be certified before the bid/offer due date, rather than before the issuance of the solicitation. Recipients (VDOT EO Division) must obtain a signed and notarized statement of personal net worth from all persons who claim to own or control a firm applying for DBE certification and whose ownership and control are relied upon for DBE certification. These statements must be accompanied by appropriate supportive documentation; e.g., tax returns, where relevant.
- The recipient (VDOT) shall not discriminate on the basis of race, color, national origin, or sex.
- Recipient's (VDOT's) DBE program must also include a monitoring and enforcement mechanism to verify that the work committed to DBEs at contract award is actually performed by the DBE. (Vouchers, Consultant Performance Reports, Form C-63, compliance reviews, etc. Each division will monitor DBE utilization. Prime consultants which do not properly utilize their DBEs, shall be given low performance evaluations scores in this area.)
- Recipients (VDOT) may not use set-aside contracts.
- If during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. (Division Administrators are responsible for monitoring this.)
- If there is a goal, bidders/offeror will be required to submit the following information to the recipient (Requested by RFP and is included in each EOI. VDOT intends to collect this data on all consultant contracts.):
  - The names and addresses of DBE firms that will participate in the contract;
  - A description of the work that each DBE will be performing;
  - The dollar amount of the participation of each DBE participating;
  - Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
  - Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
  - If the contract goal is not met, evidence of good faith efforts. (Race conscious procurements only.)
- If the apparent successful bidder/offeror has failed to submit the above information, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.



- When recipients (VDOT) set a contract goal and a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.
- You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements. (This has been added to MOA.)
- If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function. (Would not count as DBE work.)
- Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.
- If prime submits with a DBE that becomes decertified before the contract has been executed, then does not count toward goal. If DBE is decertified after contract is executed, then the prime may continue to use the firm and may continue to receive credit toward its DBE goal for the firm's work. If a contract has been executed and a DBE firm is later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal. Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goal.

### 3. Good Faith Effort Instructions (Federally Funded Project with DBE Goal)

The short list will be scored accepting what consultants submit in their Expressions of Interest regarding good faith efforts. If a firm that has submitted good faith effort documentation makes the short list, the procuring Division Administrator (cannot be delegated unless he/she will be out of the office for more than 5 work days) along with a representative of the EO Division will determine if the good faith effort is acceptable.

When there is a contract goal, a consultant must make good faith efforts to meet it. The consultant can do so either through obtaining enough DBE participation to meet the goal or documenting the good faith efforts it made to do so. These means of meeting contract goal requirements are fully equivalent. 49 CFR Part 26 (the Rule) explicitly provides that the Department must not disregard showings of good faith efforts, and it gives consultants the right to have the Department reconsider a decision that their good faith efforts were insufficient. The Department is prohibited from denying a contract to a consultant simply because it did not obtain enough DBE participation to meet the goal. The Department must seriously consider consultants' documentation of good faith efforts. To make certain that consultants' showings are taken seriously, the Rule requires the Department to offer administrative reconsideration to consultants whose good faith efforts showings are initially rejected.

The Rule also ensures flexibility for consultants by requiring that any contract goal be waived entirely for a prime consultant that demonstrates that it made good faith efforts but was still unable to meet the goal.

When the Department sets a contract goal, the basic obligation of consultants is to make good faith efforts to meet it. They can demonstrate these efforts in either of two ways, which are equally valid. First, they can meet the goal, by documenting that they have obtained commitments for enough DBE participation to meet

the goal. Second, even though they have not met the goal, they can document that they have made good faith efforts to do so. A refusal by the Department to accept valid showings of good faith is not acceptable under the Rule.

The Rule makes clear that the Department is not to use a “conclusive presumption” approach, in which the apparent successful consultant is summarily found to have failed to make good faith efforts simply because another consultant was able to meet the goal. However, the performance of other consultants in meeting the contract can be a relevant factor in a good faith effort determination, in more than one way. For example, when the apparent successful consultant fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful consultant could have met the goal. It does not, by itself, prove that the apparent successful consultant did not make a good faith effort to get DBE participation, however. On the other hand, if the apparent successful consultant fails to meet the goal, but meets or exceeds the average DBE participation obtained by other consultants, the Department may view this, in conjunction with other factors, as evidence of the apparent successful consultant having made good faith efforts.

The fact that some additional costs may be involved in finding and using DBEs is not in itself sufficient reason for a consultant’s failure to meet a DBE contract goal, as long as such costs are reasonable.

If the Department determines that the apparent successful consultant has failed to meet the requirements of a good faith effort, the Department must, before awarding the contract, provide the consultant an opportunity for administrative reconsideration. The Department intends that the process be informal and timely. The Department will ensure that the process is completed within a brief period (e.g., 5-10 days) to minimize any potential delay in procurements. The consultant will have an opportunity to meet with the reconsideration official, but a formal hearing is not required. As part of this reconsideration, the consultant must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Department’s decision on reconsideration will be made by an official who did not take part in the original determination that the consultant failed to meet the goal or make adequate good faith efforts to do so. The consultant must have the opportunity to meet in person with the reconsideration official to discuss the issues of whether it met the goal or made adequate good faith efforts to do so. The Department will send the consultant a written decision on reconsideration, explaining the basis for finding that the consultant did or did not meet the goal or make adequate good faith efforts to do so. The Department’s reconsideration personnel consists of the Commissioner’s DBE Review Panel.

It is up to the Department to make a fair and reasonable judgement whether a consultant that did not meet the goal made adequate good faith efforts. It is important for the Department to consider the quality, quantity, and intensity of the different kinds of efforts that the consultant has made. The efforts employed by the consultant should be those that one could reasonably expect a consultant to take if the consultant were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. The Department’s determination concerning the sufficiency of the firm’s good faith efforts is a judgement call: meeting quantitative formulas is not required.

If DBE is prime, they will be allowed to count toward goals the work they commit to performing with their own forces, as well as the work that they commit to be performed by DBE subcontractors. DBE consultants on prime contracts will be expected to make the same outreach efforts as other consultants.

When a DBE participates in a contract, the Department will count only the value of the work actually performed by the DBE toward DBE goals. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE’s subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater

portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function. If a DBE firm loses certification, its work no longer counts toward the DBE goal.

All consultants will be required to submit the following information to the Department with the EOI:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The percentage amount of the participation of each DBE firm participating;
- Written documentation of the prime consultant's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts.

The Department has prepared a list based on Federal Regulations of some of the kinds of efforts that consultants may make in obtaining DBE participation. It is not intended to be a mandatory checklist. The Department does not require that a consultant do any one, or particular combination, of the things on the list, nor is the list intended to be exclusive or exhaustive; it merely offers examples. Other factors or types of efforts may be relevant in appropriate cases. In determining whether a consultant has made good faith efforts, it will usually be important for the Department to look not only at the different kinds of efforts that the Consultant has made, but also of the timeliness, quantity, and intensity of these efforts.

The Department offers the following examples of efforts that may be considered:

A. Soliciting through all reasonable and available means (e.g. attendance at project showings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The consultant must solicit this interest within sufficient time to allow the DBEs to participate effectively. The consultant must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract.

D. (1) Negotiating in good faith with interested DBEs. It is the consultant's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

D.(2) A consultant using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's costs, qualifications and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a consultant's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime consultant to perform the work of a contract with its own organization does not relieve the consultant of the responsibility to make good faith efforts. Prime consultants are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations {for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority community organizations; minority contractors' groups; local, state, and Federal minority business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

#### 4. Commissioner's Panel – Disadvantaged Business Enterprise Program

##### Panel Members:

William Colavita	Fleet Management	367-6525
Larry D. Jones	Management Services	786-7712
Leonard Lao	Administrative Services	786-2724
John Neal, Jr.	Sandston Residency	328-3099
Charles H. Rasnick	Urban Division	786-7314
Remus Rhodes	Dept. Minority Business Enterprise	786-5560
Calvin Thweat	Dept. Minority Business Enterprise	786-5560
Earl T. Robb	Environmental	786-4559
Gerald A. Venable	Traffic Engineering	786-2961
Wanda Wells	Internal Audit	786-6725

##### Legal Representation:

Todd E. LePage	Attorney Generals Office	786-0063
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##### Resource Members:

Levi H. Cary	Equal Opportunity	786-2085
Freddie L. Jones	Equal Opportunity	786-4552
Horace Dickerson	Construction	786-6020
G. Craig Wingfield	Construction	786-4174

## 5. The Disadvantaged Business Enterprise Panel - Understanding the Hearing Procedure

The DBE Panel is a permanent body appointed by the VDOT commissioner. It is assembled from a group of six members and six alternates. One member and one alternate represent the Department of Minority Business Enterprise. The panel consists of five voting members and a presiding officer. Three voting members of the panel constitute a quorum. The presiding officer has no vote on matters before the panel, except in a situation where such vote is needed to break a tie.

Resource representatives from VDOT's construction and EEO divisions and the EEO coordinator from the central office attend each panel hearing.

The purpose of the panel is to hear the appeals of consultants who have been notified that their (Expressions of Interest) EOI has been rejected or they are to be enjoined from submitting (EOI), are to have payments withheld or are to have their contract cancelled because of failure to obtain the required DBE participation either during the solicitation process or at the project completion. These sanctions will be for the period of time specified in the contract provisions.

Panel hearings are held at the Virginia Department of Transportation offices in Richmond and are open to the public.

The following questions and answers are designed to help in understanding the hearing procedure

**Q. What happens when a consultant is notified that the firm is to be enjoined from submitting EOIs, to have payments withheld or to have their contract cancelled as a results of an administrative review?**

**A.** The consulting firm may request a panel hearing to try to demonstrate that the compliance failure was through no fault of its own and that all feasible means were used to obtain DBE participation.

**Q. How is a request made for a panel hearing?**

**A.** The request must be made in writing to the procuring division administrator and must be received within a specified number of days\* of the letter notifying the consultant of the intention to enjoin the firm from submitting EOIs, to withhold payments or to cancel their contract. The notification letter will include the number of days within which the request must be made.

**Q. What type of evidence does the panel require and when can it be submitted?**

**A.** The consultant should submit any evidence that shows a good-faith effort to comply, as well as any evidence that shows that failure to comply was due to circumstances beyond the consultant's control. If possible, the consultant should include any evidence from the DBE firms whose participation in the contract was sought. *All evidence the consultant wishes to have considered should be submitted with the request for a panel hearing.*

**Q. Why should documentation be submitted before the hearing?**

**A.** This will give the panel time to review the material. In some cases, the evidence submitted might be sufficient to substantiate the consultant's position. In that event, the panel could decide against a sanction and no hearing would be necessary.

**Q. What constitutes a good-faith effort?**

**A.** The department includes a list of examples of some kinds of efforts that consultants may make in seeking DBE participation in the Request for Proposal.

**Q. When will the consultant be notified as to the date, time and place of the hearing?**

**A.** The panel will give such notification within the specified number of days\* after the receipt of the contractor's request for a hearing.

**Q. May the consultant be represented by counsel?**

**A.** Yes, but representation by counsel at panel hearings is not required.

**Q. Will the panel have counsel present?**

**A.** Yes, department counsel will be present but will not have a vote in the proceedings.

**Q. How are panel hearings conducted?**

**A.** Although persons making statements before the panel are sworn and the proceedings are recorded by a court stenographer, these administrative proceedings are more informal and conducted in a more relaxed atmosphere than would be the case in a courtroom procedure. The consultant or counsel representing the consultant may make an opening statement. Such a statement should summarize everything that would tend to show the panel that the consultant has made the necessary effort in seeking to comply with the department's DBE requirements. The opening statement should refer to the documentation sent to the panel. In addition, a request can be made that the panel receive additional documentation at the hearing. It is during this opening statement that persons appearing on behalf of the consultant should be identified. These will be witnesses who can verify assertions made in the opening statement.

**Q. Will the contractor be questioned by the panel?**

**A.** Yes, the questioning of the consultant will begin after the opening statement is concluded. Witnesses for the consultant may also be questioned at this point.

**Q. Is the consultant allowed to ask questions of witnesses appearing on behalf of the consulting firm?**

**A.** Yes, but the questions must pertain to material covered in the opening statement or to questions that have been raised by the panel during its direct examination.

**Q. In the proceedings of the panel, who has the "burden of proof?"**

**A.** Since the information presented to the panel comes from the consultant, it will be the duty of the consulting firm to show that good-faith efforts were made and all feasible means were used to comply with the DBE requirements.

**Q. When can a decision from the panel be expected?**

**A.** The panel will render a decision within the specified number of days\* after the close of the hearing, usually no more than two or three days.

**Q. Can the decision of the panel be appealed?**

**A.** No. Because the hearing is the consultant's appeal from the decision to sanction, there is no further appeal. Therefore, the decision of the panel ends the administrative process concerning DBE compliance.

*Finally, it should be noted that many of the circumstances that lead to a panel hearing may be avoided if any misconceptions or misinterpretations are cleared up along the way. Therefore, if DBE procedural questions arise at any point in the selection or contract process, the consultant is strongly urged to call the*

*VDOT EEO coordinator for clarification. Understanding what the department requires concerning DBE participation is vital.*

\* The time limits referred to in this Appendix may vary according to the time frame in which the contract was awarded and will be stated in correspondence with the consultant.

# APPENDIX E

GUIDELINES FOR THE USE OF  
CONSULTANT PERFORMANCE REPORTS  
IN THE SELECTION PROCESS





**GUIDELINES FOR THE USE OF  
CONSULTANT PERFORMANCE REPORTS  
IN THE SELECTION PROCESS**

5-5-99

**BACKGROUND**

In October 1996, Mr. Browder instructed that a process be developed that would, on a formal manner, bring a consultant's past performance into the selection process. Since then, performance evaluations on firms under contract with VDOT have been collected by the Administrative Services Division (ASD) and entered into a data base. Starting September 1, 1998, these reports will be considered as you proceed through the short list process.

**PROCESS**

The following outlines the Selection Committee members' responsibility at the short list meeting. The Guidelines for the Procurement & Management of Professional Services should be referred to for the complete process:

1. The ASD representative will begin the short list meeting by outlining the process to be used during the meeting.
2. The individual committee members will read their scores. Their scores will be consolidated into one score sheet by the ASD representative.
3. Each committee member will verify their score has been accurately recorded. The math will be performed and checked, establishing a tentative short list.
4. The committee will next verify the current workload and the debarment status of the apparent short listed firms. (The committee may elect to do this after reviewing the Consultant Performance Reports)
5. The committee will then access the ASD Consultant Performance Report data base and review the reports for all prime consultants and subconsultants that are in the tentative short list. Past performance ratings for the last three years will be considered. If a firm is new to VDOT or has no performance reports on file, the committee will check some of the references shown in the Expression of Interest (EOI) and document their finding as part of the file.
6. If ratings less than 3 are discovered in the data base, the committee will review the actual performance reports for that firm. Ratings below 3 that are not supported with written comments must be discussed with the rater before they may be used to adjust the score. After this review, all committee members will have the opportunity to adjust their scores, if they find sufficient justification exists to do so. All changes on the score sheet will be made in ink and include the reason for making the change. A copy of the Consultant Performance Report with low ratings that justified the change in score will be attached to the score sheet.

7. If changes in scores result in a firm being removed from the short list, the next ranked firm will be added to the short list, the workload and debarment status verified, and the performance reports reviewed.
8. The ASD representative is not a member of the Selection Committee and will at no time in the process attempt to influence the committee's decision. However, if after observing the selection proceedings and reviewing the performance reports with the committee, the ASD representative, in his/her opinion, finds the committee has not made a decision in accordance with these guidelines or they have not properly documented their decision, the ASD representative will submit the documentation and reasons for not approving the short list to the contracting Division Administrator for review. In most cases, it is expected that the concerns will be resolved with the Division Administrator. However, if after review by the Division Administrator, the ASD representative still feels the decision is not in accordance with the guidelines or has not been properly documented, the ASD representative will ask for a review by the Chief Engineer. The Chief Engineer's decision will be final. The reason for the decision made by the contracting Division Administrator or the Chief Engineer will be included in the selection documentation.

## CONSIDERATIONS

As the Selection Committee goes through the process of reviewing the Consultant Performance Report data, the following should be considered:

1. It is not the intent of the process for a single rating less than 3 to remove a firm from consideration to provide services for VDOT. A firm's total work performance history will be taken into consideration prior to any score being changed. It is important that we remain mindful that it is the Chief Engineer's desire that we should not be using firms that perform poorly.
2. There is no set rule for the number of low ratings that requires a firm's short list scores to be changed. This is an individual decision of each Selection Committee member.
3. Low ratings may exist in areas on other projects which are not relative to your project and the committee may choose to rate this information accordingly. The consultant may also be using different personnel on your project. However, the general guidance is the Chief Engineer wants firms to consistently perform well in all areas.
4. The Selection Committee need only review the performance reports in the same disciplines of work being procured. If a procurement is solely for bridge design, only the Structure and Bridge Division performance reports need to be reviewed. When surveying work is included as part of a road design contract, the term surveying and Location and Design Division reports will be reviewed. When a bridge design consultant is required to provide construction inspectors on unique types of construction, both the Structure and Bridge Division and construction inspection reports will be reviewed. A consultant's performance with other divisions within the same category may be considered if determined to be relevant to the current procurement. If a firm has no performance reports on file related to the requested

services, the committee will check some of the references shown in the Expression of Interest and document their findings as part of the file.

5. A rating of 3 indicates the consultant met the terms and conditions of their contract and is not considered to be a bad rating. Fractional ratings less than three may be given to indicate that a firm did not totally meet expectations, but their work was not of such poor quality for them not to be considered for future work. Committee members need to refer to the rater's comments. Any rebuttal comments by the consultant should also be considered.
6. The quality of the final product is of utmost importance; however, the amount of time and effort spent by the Department's staff in the management and supervision of the consultant during the project life must be considered. A consultant may submit a good final product, but it required a tremendous effort by Department personnel to make the consultant achieve the end results. This should be reflected in the performance reports and considered by the committee.
7. Low ratings of subconsultants should be weighed according to their scope and value to the effort, keeping in mind the Chief Engineer expects subconsultants to perform consistently well.
8. The short list scores may be adjusted as the Selection Committee deems appropriate based on the numerical ratings and significance of the rated category to the project being considered. If a firm's score is adjusted and the firm remains in the short list, the performance reports may be cited in the narrative prepared to document the selection recommendation as a reason for not ranking as high as the other firms.
9. Sometimes, it may be necessary for the Selection Committee to communicate with the rater that completed a Consultant Performance Report. This may occur from the rater not giving clear enough comments to appropriately support a low score or from the consultant's rebuttal to the rating in their comment section.